157-168

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. 793.

JAMES T. SHIELDS, JUNIOR, RECEIVER OF THE MORRISTOWN AND CUMBERLAND GAP RAILROAD COMPANY, APPELLANT,

vs.

JOHN COLEMAN AND THE ATLANTIC TRUST COMPANY ET AL.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF TENNESSEE.

FILED SEPTEMBER 8, 1894.

(15,677.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., OCTOBER 22, 1894.

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a In the United States Circuit Court for the Northern Division of the Eastern District of Tennessee, at Knoxville.

JOHN COLEMAN *vs.* MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et als.* and ATLANTIC TRUST COMPANY *vs.* MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY.	Consolidated Causes. In Equity.

T. R. Cornick, Esq., Knoxville, Tenn., solicitor for James T. Shields, jr., appellant.

Ingersoll & Peyton, Knoxville, Tennessee, solicitors for John Coleman.

Helm & Bruce, Louisville, Ky., solicitors for Morristown & Cumberland Gap Railroad Company, and

Webb & McClung, Knoxville, Tenn., solicitors for Atlantic Trust Co., appellees.

1 UNITED STATES OF AMERICA, *Eastern District of Tennessee, Northern Division,* } *ss:*

Be it remembered that at a circuit court of the United States, began and held for the northern division of the eastern district of Tennessee, at the court-house in the city of Knoxville, within said district and the sixth circuit, on the 2nd Monday, it being the 9th day, of July, A. D. 1894—present and presiding, the Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee—the following proceedings were had, to wit:

JOHN COLEMAN *vs.* THE MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY and Others.	No. 942. In Equity.

Be it remembered that heretofore, to wit, on the 26th day of May, A. D. 1892, came the complainant and filed its original bill in the clerk's office of said court; which said original bill is clothed in the words and figures following, to wit:

Original Bill.

In the Circuit Court of the United States, at Knoxville, for the Eastern District, Northern Division of Tennessee.

JOHN COLEMAN
vs.
THE MORRISTOWN AND CUMBERLAND GAP RAILROAD COMPANY and Others. } In Equity.

2 To the judges of the circuit court for the eastern district of Tennessee:

Complainant, John Coleman, a resident of the city of Louisville and a citizen of the State of Kentucky, brings this his bill of complaint against The Morristown & Cumberland Gap Railroad Company, a railway corporation organized and existing under the laws of the State of Tennessee, with its chief office at Morristown, Hamblen county; and Allison, Shafer & Company, a partnership firm of railroad contractors composed of F. H. Allison, J. J. Shafer, and C. J. Allison, citizens of the State of Tennessee, but inhabitants of the eastern district of Tennessee aforesaid, residing at Morristown aforesaid, defendants, and respectfully shows to the court:

I.

That in the year 1890 the defendant railroad company contracted with the defendant Allison, Shafer & Company for the grading of its roadway, the construction of its culverts and bridges, the furnishing of crossties, the laying of its track, and for other necessary things to be done in the construction of its line of railroad from Morristown, in Hamblen county, aforesaid, through Grainger county, to Corryton, a distance of about 40 miles, which work was practically completed in February or March, 1892, and, as complainant is informed and believes, said work has been but partially paid for and there is yet due and owing from said railroad company to said Allison, Shafer & Company more than $50,000.00 under said contract for the performance of said work, for the security of which said Allison, Shafer & Company have a lien upon said line of railroad so constructed as aforesaid under said contract from Morristown to Corryton.

II.

3 Complainant further shows that on the 29th day of May, 1891, one P. T. Downs and your complainant, under the firm name of Downs & Coleman, made and entered into a contract with said Allison, Shafer & Company to furnish the labor, load all material, and lay and surface the track on the line of said railroad from Morristown to Corryton; and in pursuance of said contract, thereafter and before the first day of March last, your complainant laid said track on said railroad, by virtue of which said railroad received a benefit, and the value of such work and labor done and ser-

vices rendered in such track laying amounted to the sum of $16,790.70, as shown by memorandum of agreement made and entered into by and between said Allison, Shafer & Company and your complainant at St. Louis, Missouri, March 15, 1892, a copy of which is herewith filed and prayed to be taken as part of this bill and marked Exhibit 1.

Said P. T. Downs did none of said work and has no interest whatever under said contract, but transferred the same to your complainant before the making of said settlement and agreement, and acted as arbitrator between complainant and Allison, Shafer & Company in the settlement of said claim, which, as appears from said exhibit, signed by said Allison, Shafer & Company, is due to complainant, and was payable, together with interest at 8 % per annum thereon, the legal rate of interest in the State of Missouri, on or before the first day of May, 1892. Complainant shows unto your honor that no payment has been made to him by the defendants or either of them since said settlement.

III.

Complainant further shows that within 90 days thereafter said work and labor was done and such service rendered as aforesaid, to wit, on the 18th day of April, 1892, he notified said railroad company in writing that said lien was claimed by him, specifying in the face of said notice the character of the work and the labor done and the value thereof. The notice, a copy of which was delivered to said company by the sheriff of Hamblen county, is herewith filed, marked Exhibit "B," and prayed to be taken as part of this bill.

4 IV.

Said railroad company is insolvent. In addition to the sum it owes to Allison, Shafre & Company there are many other claims against it for material, equipment, and rights of way, amounting to more than $50,000.00, as complainant is informed and believes, for most of which suits are pending in the circuit courts of Grainger and Hamblen counties.

Said Allison, Shafer & Company, on account of their inability to obtain payment from said railroad company for the amount due from it to them, are also insolvent and unable to meet their numerous obligations.

Complainant is informed and believes that they have possession of said railroad property and are operating it under some contract or agreement with said railroad company.

And complainant is also informed and believes that the expenses of operation and the receipts therefrom are about equal, but that probably during the next three months, on account of the expected large increase of passenger traffic, a net income will be realized from operating the railroad.

V.

Defendants Allison, Shafer & Company are entitled to some credits upon the amount aforesaid for payments made to complain-

ant or his order during the work, the amount of which they will be able to show the balance due to complainant after deducting all just credits will exceed $2,000.00.

Complainant files this bill on behalf of himself and all other creditors of said insolvent railroad company who may choose to come into court and have themselves made parties to this proceeding as it may order and direct.

5 *Prayer.*

Premises considered complainant prays:

That he may have judgment against said Allison, Shafer & Company for the amount due him for the work and labor done as aforesaid upon said railroad, and that a lien be declared therefor upon said railroad, its franchises, and property, and that the same be enforced by proper proceedings. In the meantime complainant prays that a receiver be appointed to take charge of said railroad property pending this suit and operate the same for the benefit of the creditors, especially your complainant, and that he may, if the net earnings will warrant the same, have satisfaction of his debt aforesaid out of the earnings of said property; that complainant have such other and further general relief as the nature of his case may require; therefore will your honors grant unto complainant the right of subpœna out of and under the style of this court to be directed to said defendant, The Morristown and Cumberland Gap Railroad Company and Allison, Shafer & Company, commanding them and each of them by a certain day and under a certain penalty to appear before your honors in the circuit court aforesaid, and then and there answer this bill, though not upon oath, and abide the order and decree of this court.

JOHN COLEMAN,
By INGERSOLL & PEYTON, *Solicitors.*

STATE OF TENNESSEE, }
County of Knox. }

Masterson Peyton, solicitor for complainant, being duly sworn, says that the statements made in the foregoing bill are true to the best of his knowledge and belief.

MASTERSON PEYTON.

Sworn to and subscribed before me this 26th day of May, 1892.

[SEAL.] J. T. CARTER,
Deputy Clerk, U. S. Circuit Court.

6 EXHIBIT "A."

ST. LOUIS, *Mch 15th*, 1892.

We, the undersigned, do hereby accept the settlement of Mr. P. T. Downs in full settlement of our contract, which is as follows:

Estimate allowed F. J. Moser, chief engineer	14,485 90
Extra by Mr. Downs	250 00
Bill allowed by "	2,054 80
Total	16,790 70

Payment on balance due Mr. Coleman will be made on or before May 1st at 8 % interest per annum.

This document is in settlement of points in dispute by Downs & Coleman and Allison, Shafer & Co.

ALLISON, SHAFER & CO.
DOWNS & COLEMAN,
Per JOHN COLEMAN.

Witness:
P. T. DOWNS.

EXHIBIT "B."

To The Morristown & Cumberland Gap Railroad Co., its agents and attorneys:

You are hereby notified that a lien is claimed by us upon your railroad in the State of Tennessee, in the counties of Hamblen and Grainger, and upon its franchises and property to the amount of seventeen thousand dollars ($17,000.00) for work and labor done and material furnished by us as subcontractors under Allison, Shafer & Co., in laying and aiding in laying the track on said railroad and in surfacing the same from Morristown to Cory-
7 town, which labor was performed by John Coleman and amounts to the sum of sixteen thousand seven hundred and ninety dollars and seventy cents ($16,790.70), with interest thereon from the 15th day of March, 1892, at 8 % per annum, as per agreement of said parties on the day last aforesaid, April 18, 1892.

DOWNS & COLEMAN AND
JOHN COLEMAN,
By MASTERSON PEYTON, *Solicitor.*

INGERSOLL & PEYTON,
Solicitors for Downs & Coleman and John Coleman.

Having made search for the president and not finding him in my county, I have this day executed the within notice on the Morristown & Cumberland Railroad Co. by delivering a true copy of same to C. R. Johnson, the treasurer of said company, he being highest official of said company in my county, this April 18th, 1892.

J. F. HAYS,
Sheriff of Hamblen County.

8 And afterwards, to wit, on the 6th day of June, A. D. 1892, an entry was made upon the journal of said court; which said entry is clothed in the words and figures following, to wit:

Journal "M," page 2.

Be it remembered that at a circuit court of the United States, began and held for the northern division of the eastern district of Tennessee, at the court-house, in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 11th day, of January, A. D. 1892—present and presiding, the Honorable D. M. Key, judge, etc.—the following proceedings were had, to wit:

MONDAY MORNING, *June* 6, 1892.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge, etc.

JOHN COLEMAN)
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD CO. and Others.)

The motion of the complainants in this cause for the appointment of a receiver came on to be heard before the Hon. D. M. Key, judge, etc., at chambers, on this the 6th day of June, 1892, and having heard the pleadings and evidence on file and listened to the argument of counsel and considered carefully the law and facts of the case, and the court being of the opinion that this is a proper case for the appointment of a receiver, *and* said motion is therefore sustained and allowed, and Frank J. Hoyle is hereby appointed receiver of all the property described in the bill, viz., the Morristown & Cumberland Gap railroad, with all of its books and ac-
9 counts, tracks, switches, turnouts, depots, depot grounds, turn-tables, rolling stock, including engines, freight cars, passenger cars, and all other machinery and tools owned by said Morristown & Cumberland Gap Railroad Co., and on his giving a receiver's bond, with two sufficient securities in the penalty of $20,000.00, he will enter upon the discharge of his duties as receiver, and will at once proceed to take possession of said Morristown & Cumberland Gap railroad and operate the same to the best advantage for all parties interested therein.

II.

That said receiver is hereby especially directed—

1. To make an inventory of all of the property belonging to the Morristown & Cumberland Gap Railroad Co. taken into his possession and file the same as part of the records in this cause.

2. He will report to the court at the end of each month the receipts and expenditures necessary in the operation of said road.

3. He will pay out of the income of the road all of its necessary running expenses.

4. He will pay for such supplies as have been furnished and the labor of the employees, if anything is due them, which have been furnished or done in the running of the road within the last three months past.

5. The salary of said Frank J. Hoyle is hereby fixed at $150.00 per month.

6. Said receiver is hereby ordered to give his whole time and attention to the running and operation of said railroad and to personally inspect the books and accounts of said road when he takes possession of the same, and he will report at the end of each month the exact amount of income and expenses of same.

7. The defendants in this cause, The Morristown & Cumberland Gap Railroad Co. and Allison, Shafer & Co., are hereby
10 ordered and directed to turn over to *turn over to* and deliver to said F. J. Hoyle, receiver, all of the property mentioned and described in former part of this order.

11 And afterwards, to wit, on the 3rd day of August, A. D. 1894, a state- of the clerk was filed in the clerk's office of said court; which said statement is clothed in the words and figures following, to wit:

Statement of Clerk.

JOHN COLEMAN
vs. } No. 942.
MORRISTOWN & CUMBERLAND GAP RAILROAD CO. *et al.*

In the above-stated cause on June 8, 1892, the defendant railroad company filed a petition for leave to execute bond for whatever amount might be decreed in favor of John Coleman, and praying that the order appointing receiver be vacated. The prayer of said petition was granted and bond given in the penalty of $5,000, with J. H. Rathburn as the surety.

(The above-mentioned petition and bond have disappeared from the file.)

J. T. CARTER, *Dep. Clerk.*

12 And afterwards, to wit, on the 8th day of June, A. D. 1892, an entry was made upon the journal of said court; which said entry is clothed in the words and figures following, to wit:

WEDNESDAY MORNING, *June 8th*, 1892.

Court met pursuant to adiournment.

Present and presiding: The Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

JOHN COLEMAN
vs. } No. 942.
THE MORRISTOWN & CUMBERLAND GAP R. R. CO. *et al.*

The petition of the Morristown & Cumberland Gap Railroad Company having been presented and by the court duly considered, it is now ordered that the prayer thereof be granted, and the said Morristown and Cumberland Gap Railroad Company may execute a bond to the complainant, with surety, to be approved by the court, that it will pay off and discharge the amount which it may finally

appear that the Morristown & Cumberland Gap Railroad Company is liable to complainant, by reason of a lien or otherwise, on account of work done or materials furnished by him to the Morristown & Cumberland Gap Railroad Company and the costs incurred by complainant in this suit.

Whereupon the petitioner, The Morristown & Cumberland Gap Railroad Company, produced a bond, with J. H. Rathburn as surety, whose solvency having been investigated by the court it is ordered that said bond be and the same is now approved, and that the order appointing the receiver herein be and the same is now approved, and that the order appointing the receiver herein be, and the same is hereby, vacated and the said receiver discharged.

13 And afterwards, to wit, on the 10th day of June, A. D. 1894, the following receiver's report was filed in the clerk's office of said court; which said report is clothed in the words and figures following, to wit:

Receiver's Report.

JOHN COLEMAN
vs. } Receiver's Report.
MORRISTOWN & CUMBERLAND GAP R. R. Co. *et al.*

To the judges of the circuit court for the eastern district of Tennessee:

I submit the following report as receiver in the above-entitled cause:

I.

The property that came into my hands as receiver on taking charge, June 7th, 1892:

1. The real and personal property of the defendant set out in the memorandum hereto attached, Exhibit "A."

2. The books, vouchers, notes, accounts, and office furniture detailed in Exhibit "B" hereto.

II.

The cash that has come into my hands:

1. Amount turned over to me on taking charge, June 7th, 1892	404 67
2. Amount received since taking charge	35 00
(From conductors' cash collections.)	
Total collections from all sources	$439 67

III.

Moneys expended by me, nothing.

Total expenditures	$000 00
14 Balance on hand	$439 67

Agents remit cash weekly and have not remitted for this week.

IV.

Pursuant to an order of court herein, I, on the 9th day of June, 1892, turned over and surrendered to said railroad company, defendant, all of the real and personal property, including cash on hand and in bank, together with all books, vouchers, &c., received by me—receipts therefor are hereto attached as Exhibits "B" and "C"—and, pursuant to an order of this honorable court, entered in the office of the clerk of the United States circuit court, at Knoxville, June 6th, 1892, in Book "M," page 2, and having filed a receiver's bond, with two sufficient securities, in the penalty of $20,000.00, I proceeded to Morristown and entered upon the discharge of my duties on June 7th, 1892, and took possession of the Morristown & Cumberland Gap railroad and all its property of every kind. See Exhibits "A" & "B."

In compliance with your instructions in subdivision one of the order, I began at once to make an inventory of all the property of the Morristown & Cumberland Gap Railroad Company, and this inventory was in process of being made when the receivership was vacated by an order of this honorable court. However, I succeeded in making a portion of the inventory of the personal property of the Morristown & Cumberland Gap Railroad Company, which is attached as Exhibit "B," the inventory of the railroad, side tracks, switches, depots, engines, car equipments, &c., being incomplete.

Upon an inventory of the books and accounts I found the road had been in operation since February 15th, 1892, and from that date to May 1st, 1892, the books, accounts, vouchers, cash, and everything appertaining to the treasury and auditing dep'ts were in the hands of the sup't of the road and the duties were performed by him. The books during this period, so far as I could see, were crude and few, a simple entry being made of receipts and disbursements, the sup't receiving the money and disbursing the same, this practice being entirely at variance with the established usage of railroads, and, too, placing undue responsibility upon one person. Paid vouchers for February, March, and April were shown me, which, it was claimed, were a check against the disbursements for the same period. This claim I had not the time to verify.

Beginning May 1st, 1892, an auditor and cashier was appointed and a set of accounting books bought, with a supply of auditing and treasury blanks, but the auditor and cashier, being one and the same person and performing other duties in the traffic department, claimed never to have found time to write up the books, and therefore there was no permanent record in the auditing or treasury books, so far as I could see, of the earnings or receipts and sources of revenue and of an itemized distribution of expenses or disbursements, the auditor and cashier seeming to rely upon a simple entry of cash and bank books and vouchers showing items, etc., this condition of accounts and cash existing from May 1st to June 7th, 1892.

Aside from other important reasons it is necessary that railroad

accounting books should be written up daily, so as to be able to furnish valuable statistical information necessary to a successful operation of the property.

The general impression I received from the condition of the books and accounts of the Morristown & Cumberland Gap railroad was that they were loosely kept and allowed to get far behind, and that the vouchers or warrants on the treasury were drawn by the auditor and paid by the cashier, who was the same person, subject, however, to the general manager's approval. If it was in the spirit of economy that the auditor and cashier was one person, it was
16 a mistake, as the auditor and cashier or treasurer of a railroad should be separate and distinct and check upon each other.

There seems to be a general air of lack of order and system about the offices and desks of the Morristown & Cumberland Gap railroad, and important daily, weekly, and monthly reports were lying around loosely and seemed never to have been filed. Another very important clerical work has been seriously neglected, to wit:

The car record.—I was informed that the Morristown & Cumberland Gap Railroad Co. had leased fifty freight cars, valued about $18,000.00, and most of these have become scattered far and wide upon the railroads of this country and perhaps Canada and Mexico, with no record whatever of their location. This is a serious omission, and may ultimately cause the road a heavy loss, besides embarrassing it in filling its local demands.

The physical condition of the road I found to be wretched, due almost entirely to its being new and but recently turned over by the contractors to the operating officers in a partially finished state. Much of it will have practically to be rebuilt and at once. The maintenance of way of the Morristown & Cumberland Gap railroad is being rapidly and intelligently put in fair condition by the sup't, who is an old, experienced engineer.

The practical operation of the road seemed to be carried on without an eye to economy, and too many trains were run, and an excess of trainmen were employed daily at heavy cost and light revenue. Immediately upon assuming charge I reduced the number of trains and made the train crew do the work of two, a saving of nearly $500.00 per month or $6,000 per year.

The new time-card is attached and marked "Exhibit D;" in other words, the operating expenses apparently were largely
17 in excess of what they should be, and the closest economy ought to have been observed.

Upon investigation I found the expenses were in excess of the earnings as two to one, but no effort seemed to be made to reduce one and increase the other.

As the road is new and many permanent betterments are necessary, much money is needed each month to make good the deficit; therefore the condition of affairs should be an incentive to the present management for strict economy in operation and for strenuous efforts towards increasing the revenue.

Before closing this report I feel it my duty to speak of the state of

feeling existing between the patrons of the road and people generally along the line of the road in Morristown, Grainger, and Hamblen counties and the present owners and management. Upon taking possession I discovered much prejudice, bitterness, and open hostility by the people towards the road and its management, and an almost irreconcilable feeling exists today, which is to be deplored, as it practically blocks the future success of the road under the present condition.

All of which is respectfully submitted.

FRANK J. HOYLE.

STATE OF TENNESSEE, }
Knox County. }

Frank J. Hoyle, receiver, being duly sworn, says that the statements made in the foregoing report are true to the best of his knowledge and belief.

FRANK J. HOYLE.

Sworn to and subscribed before me this June 10th, 1892.
[SEAL.] J. T. CARTER, *Dep. Clk.*

The attached receipt refers particularly to all the property described in the bill, viz., the Morristown & Cumberland Gap rail-
18 road, main line, thirty-nine and four-tenths miles of railroad, side track, switches, frogs, bolts, nuts, spikes, steel rails, turnouts, depots, depot grounds, turn-tables, rolling stock, including engines, freight cars, passenger cars, maintenance-of-way cars, and all other machinery and tools owned by said Morristown & Cumberland Gap Railroad Company, of which this is intended to be an exhibit.

Morristown & Cumberland Gap Railroad Company.

MORRISTOWN, TENN., *June 9th*, 1892.

All of the property of the Morristown & Cumberland Gap Railroad Company in the possession of Frank J. Hoyle, receiver, has this day been restored to said railroad company.

H. E. DYER,
Gen'l Manager M. & C. G. R. R.

The above receipt covers all cash turned over to me which was in bank when I took possession of the Morristown & Cumberland Gap Railroad—

To wit.....	$404 67
Amount received since taking charge:	
(Conductors' cash collections).....	35 00
Total cash from all sources.....	439 67

Inventory of Personal Property, Books, Vouchers Unpaid, Accounts, and Office Furniture.

1 set general books (ledger, journal, & cash).
1 voucher record.
1 abstract record.
1 agents' ledger.
1 " ticket journal.
1 " freight "

19 *Miscellaneous Assortment of Official Blanks and Fixtures.*

1 McNeal & Urban fire-proof safe.
1 upright standing desk.
1 portable wash-stand.
2 revolving office chairs.
4 straight chairs.
1 office stool.
21 lanterns.
2 tail lights.
1 marker.
Unpaid vouchers for May, $888.15.
" pay-rolls " " 2,652.30.

I certify that the within inventory is correct.

W. S. WHITNEY,
Auditor M. & C. G. R. R.

JUNE 9TH, 1892.

The above property was this day restored by Frank J. Hoyle, receiver, to the Morristown & Cumberland Gap R. R. Co.

H. E. DREW,
Gen'l Manager M. & C. G. R. R. Co.

EXHIBIT "D."

Morristown & Cumberland Gap Railroad Company, Frank J. Hoyle, receiver.

Time-table No. 4, for the Government and Information of Employés Only, to Take Effect Thursday, June 9, 1892, at 6 o'clock a. m.

Trains run on central (90th meridian) standard time.

20 *Memorandum of Date of Filing Petitions of T. H. McKoy, Jr., and Others.*

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD CO. *et als.*

T. H. McKoy, Jr., filed his petition on June 20, 1892, setting up a claim against defendant railroad Co. for $5,444.94 for services ren-

dered as an employé and as vice-president of said R. R. Co. and for expenses incurred on behalf of said company.

A. L. Manly and others filed their petitions on July 4, 1892, setting up claims against defendant company for about $2,943 for notes, orders, and accounts given for rights of way, materials furnished, and work and labor done.

Wm. Kimbro and others filed their petition on July 7, 1892, setting up claims against defendant company for $163.25 for work and labor done and supplies and materials furnished to Downs & Coleman, subcontractors, for which they gave orders on Allison, Shafer & Co., general contractors.

Wm. Harrell and others filed their petition on July 7, 1892, setting up claims against defendant company for $424 for rights of way and for work and labor done and services rendered to Downs & Coleman, subcontractors, and for which Downs & Coleman gave orders on Allison, Shafer & Company, general contractors.

21 And afterwards, to wit, on the 27th day of July, 1892, came the defendants Allison, Shafer & Co. and filed in the clerk's office of said court the following answer; which said answer is clothed in the words and figures following, to wit:

Answer.

JOHN COLEMAN)
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD CO. *et al.*)

The joint and several answer of F. H. Allison, J. J. Shafer, and C. J. Allison, composing the firm of "Allison, Shafer & Company," to the bill of complaint filed against them and others in this cause.

The said respondents, saving and reserving unto themselves all manner of benefit of exception to the said bill on account of the many erroneous, inaccurate, and false statements therein made, in answer thereto or so muc- thereof as they are advised it is at all material for them to make answer unto, answering, say:

I.

It is true that in the year 1890 the defendant railroad company contracted with these respondents for the grading of its roadway, the construction of its culverts and bridges, the furnishing of crossties, the laying of its track, and for other necessary things to be done for the construction of its line of railroad from Morristown, in Hamblen county, through Grainger county to Coryton, a distance of about 40 miles, which work was practically completed in February or March, 1892. It is true that there is still due to these re-
22 spondents from said railroad company the sum of $50,000.00, and largely more than that sum under said contract, and for which these respondents have a lien on said railroad.

II.

It is also true that on or about the 29th of May, 1891, complainant and one P. T. Downs, under the firm name of Downs & Coleman, made and entered into a contract with said Allison, Shafer & Company to furnish the labor and lay the track as stated in the bill, and that in pursuance of that contract the value of such labor done and services rendered in such track-laying amounted to $16,790.70, as shown in Exhibit #1 to the bill, but respondents aver and show that they are entitled to credits upon said sum amounting to about $13,500.00, as will be hereinafter shown, and that only the balance is due the complainants.

III.

Complainant does not know and therefore cannot answer whether or not within 90 days after said work and labor was done complainant notified said railroad company in writing that he claimed a lien therefor as provided by the statute of Tennessee.

IV.

These respondents do not know that said railroad company is insolvent, but admit that it owes a number of debts, the amount of which respondents are not able to state. The allegation that these respondents are insolvent is denied as false. The allegation that these respondents are in possession of said railroad property and are operating it under said contract or agreement with said railroad company is denied as false.

V.

It is true that these respondents are entitled to credits upon
23 said sum of $16,790.70 for an am't nearly sufficient to consume said sum of $16,790.70. These credits will be shown in detail upon the taking of the account in this cause. And now, having fully answered, respondents pray to be hence dismissed with their reasonable costs in this behalf expended.

ALLISON, SHAFER & CO.,
Per T. S. WEBB, *Att'y.*

WEBB & McCLUNG, *Sol's.*

24 And on the same day, to wit, on the 27th day of July, A. D. 1892, the answer of the Morristown & Cumberland Gap R. R. Co. was filed in the clerk's office of said court; which said answer is clothed in the words and figures following, to wit:

Answer of the Morristown & Cumberland Gap Railroad Company.

JOHN COLEMAN
vs.
THE MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*

The defendant The Morristown & Cumberland Gap Railroad Company, for answer to so much of the bill of complaint filed against it herein as it is advised it is material to be answered, says:

I.

That — is true that in the year 1890, to wit, on the 25th of March, 1890, it contracted with the defendants Allison, Shafer & Company for the grading of its roadway, the construction of its culverts and bridges, the furnishing of cross-ties, the laying of its track, and, in short, for the construction and completion of its said road, and the said Allison, Shafer & Company agreed to complete the said road on or before the 1st of March, 1891. A true copy of said contract — as a part hereof, marked "A." By said contract the defendant agreed and undertook, as compensation to the said Allison, Shafer & Company for constructing the said road, to give, assign, and deliver to them $800,000 of the capital stock of the company, which was then the agreed total issue of common stock of the company, the entire issue of first-mortgage bonds of the road, and $200,000 of preferred stock at par of the company, the latter to be used simply for
25 the equipment of the road, and also all town and county subscription to the road, the amount to be delivered to the said Allison, Shafer & Company when the last rail should be laid making the connection with Morristown and the Knoxville & Cumberland Gap railroad. The defendant says that in pursuance of said written contract the defendant Allison, Shafer & Company proceeded to the execution of their work and had completed a large portion thereof prior to March, 1891, and the defendant became bound and obliged to pay to the said Allison, Shafer & Company the consideration stated in said contract, and the defendant had in accordance with its agreement delivered to the said Allison, Shafer & Company a large number of the first-mortgage bonds of the company, some of which the said Allison, Shafer & Company had used and negotiated in raising money to build the road to the extent to which it had been carried.

About April 9th, 1891, for certain technical and business reasons it was thought advisable to change the contract somewhat and instead of issuing $800,000 of common stock and $200,000 of preferred stock to issue the whole as common stock, viz., a million dollars of common stock. There were business reasons also for calling in the first-mortgage bonds which were then issued and issuing in lieu of them new bonds, and this was by agreement done and the new bonds were issued to take the place of the other bonds which had been issued and in discharge of the defendant's obligation to issue the bonds as compensation to Allison, Shafer & Company for the building of said road.

II.

The defendant denies that there is yet due from it to the said Allison, Shafer & Company or any of them $50,000 or any other sum under said contract, but the defendant says that the said Allison, Shafer & Company are largely indebted to this defendant, and this defendant has paid to the said Allison, Shafer & Company the whole of the consideration agreed to be paid to them for the
26 full discharge and performance of their contract with this defendant for the construction of said road, and this defend-

ant in paying to the said Allison, Shafer & Company the full amount of the agreed consideration did but comply with its written obligation, and for that reason the defendant insists that the said act of the Tennessee legislature approved March 18th, 1891, entitled "An act providing a prior lien for and giving greater security to contractors, subcontractors, laborers, material men, engineers, and all other persons rendering valuable and necessary services, professional or otherwise, in the erection, construction, repairing, and equipping of any railroad in this State, and to amend chapter 220 of an act passed March 29th, 1883, entitled An act to protect contractors, subcontractors, mechanics, laborers, and engineers who perform work or furnish materials for the construction or repair of railroads," does not and cannot apply to the contract in this case, nor can any lien be created under it against the property of defendant.

At the date of the entering into of the contract above referred to under and by the laws of Tennessee the defendant's road was not subject to the lien of subcontractors except to the extent it was indebted to the principal contractor, and the defendant insists that the said State of Tennessee did not possess the power to pass the law referred to and make it apply to the contract in this case, because such act upon the part of the State of Tennessee impaired the obligation of the contract aforesaid and is expressly forbidden by the Constitution of the United States.

III.

The defendant has no knowledge or information sufficient to form a belief as to the extent of the work performed by the complainant and one Downs under the firm name of Downs & Coleman
27 for Allison, Shafer & Company, nor of the extent, if any, to which the said Allison, Shafer & Company are indebted to the said firm of Downs & Coleman or the said Coleman, nor as to whether the said Downs has transferred his interest to the said Coleman.

Of all these matters the defendant requires from the plaintiff strict proof.

IV.

The defendant denies that it is insolvent, and it denies that there are claims due against it for material or equipment. It is true there are some claims against it for right of way, some of which have been adjusted, but a great many of which have not been adjusted and are simply in process of adjustment. A very small portion of that which has been adjusted and is due remains unpaid, but the defendant alleges that this right of way should have been furnished by Allison, Shafer & Company, and it has a claim against Allison, Shafer & Company for anything which it may pay for the right of way aforesaid.

Defendant has no knowledge or information sufficient to form a belief as to the financial condition of Allison, Shafer & Company, but defendant denies that Allison, Shafer & Company have posses-

sion of the railroad property of the defendant or that they are operating it under any contract or agreement with the railroad company. The defendant says that the said Allison, Shafer & Company have not nor has any one of them nor had they or any of them at the date of the institution of this suit any voice in the control or management of the defendant company.

The defendant states that up to this time it has not been able from its receipts to pay the operating expenses.

V.

The defendant says it is true, as it is informed, that Allison, Shafer & Company are entitled to credits upon the amount set up
28 and claimed by the complainant, and it is informed and alleges that the total amount of the credits which Allison, Shafer & Company are entitled to aggregates about $13,468.91, but of this the defendant cannot speak with absolute certainty because of the fact that it is informed that the said Allison, Shafer & Company and the said Downs & Coleman have not had an accurate accounting between them, but the defendant insists that such actual and accurate accounting should be had before any lien is declared, if any is so declared, in favor of the complainant against the property of this defendant.

Wherefore the defendant prays that it be adjudged that the complainant has no lien upon the property of this defendant for any part of its said debt, and it prays the court for such orders as will protect this defendant from the enforcement against it of any lien greater in amount than is warranted by the actual facts, if any lien at all exists.

JAMES P. HELM,
Counsel for Defendant.

H. E. Drew says he is the general manager of the defendant The Morristown & Cumberland Gap Railroad Company and the highest officer in the State of Tennessee, and that the statements contained in the foregoing answer, so far as they are made upon his knowledge, are true, and so far as they are made upon information and belief he believes them to be true.

H. E. DREW.

Sworn to and subscribed before me by H. E. Drew this 27th day of July, 1892.

J. T. CARTER,
Deputy Clerk.

29 And on the same day, to wit, on the 27th day of July, 1892, the construction contract, Exhibit "A" to the answer of the Morristown & Cumberland Gap Railroad Company, was filed in the clerk's office of said court; which said exhibit is clothed in the words and figures following, to wit:

EXHIBIT "A" TO ANSWER OF MORRISTOWN & CUMBERLAND GAP R. R. CO.

To the president and directors of the Morristown & Cumberland Gap Railroad Co.:

We submit to you the following proposition for the construction of your road from Morristown to a connection with the Knoxville, Cumberland Gap & Louisville R. R. at or near Cedar Ford or to a point to be determined by competent engineers and by a careful survey:

The road to be a standard *guage* (4′ 8½″), laid with 60 ℔ steel rails throughout, with all necessary sidings, bridges, trestles, and culverts, to be standard specifications and built in a workmanlike manner.

Ties to be first class and of good native timber, laid 2,600 per mile.

The graduation to be regular Southern specifications (railroad carefully completed under instructions from the chief engineer).

Track laying and surfacing are to be done in a workmanlike manner, also under instructions of the chief engineer.

The equipment of the road shall consist of such freight and passenger locomotives, freight, passenger, and flat cars, also track equipment for each section, as may be determined requisite by the chief engineer for the satisfactory operation of said road.

We also agree to commence active construction within one hundred and twenty (120) days from this date at such point or points as the chief engineer may determine and vigorously prosecute construction to completion on or before the first (1st) day of March, 1891.

All of which we hereby agree to perform for the following considerations: Eight hundred thousand dollars' ($800,000) worth of the total issue of the capital stock of the company, the entire amount of the first issue of the first-mortgage six (6) per cent. bonds of the road, and two hundred thousand dollars' ($200,000) worth of the preferred stock of the said company (for the equipment of the road), and all town and county subscriptions to said road or amount of same to be delivered to us when last rail is laid making connection with Morristown and the K. C. G. & L. railway.

Said first-mortgage bonds and stock to be delivered to us proportionately on the first day of each month from commencement of work on said railroad, we agreeing to complete same on or before March 1st, 1891.

(Signed) ALLISON, SHAFER & COMPANY.

Resolved, That the within proposition be, and the same is hereby, accepted, and the said proposition with this endorsement shall be the contract between the said Morristown & Cumberland Gap Railroad Company and the firm of Allison, Shafer & Company.

[SEAL.] (Signed) J. G. MARTIN, *Pres't.*

Attest: F. H. ALLISON.

31 *Memorandum of Petitions and Pleadings Filed.*

1892.

May 26. Bill of John Coleman filed.
June 8. Petition and bond of M. & C. G. R. R. Co. filed.
" 20. " of T. H. McKoy, Jr., filed.
July 4. " " A. L. Manly and others filed.
" 7. " " Wm. Kimbro and others filed.
" 7. " " Wm. Harrell and others filed.
" 27. Answer of Allison, Shafer & Co. filed.
" 27. " and Exhibit "A" of M. & C. G. R. R. Co. filed.
" 27. Demurrers of M. & C. G. R. R. Co. filed to petitions of A. L. Manly *et al.*, Wm. Kimbro *et al.*, and Wm. Harrel *et al.*
Aug. 10. Ans. of M. & C. G. R. R. Co. filed to petition of T. H. McKoy, Jr.
Sept. 2. Petition of F. J. Moser filed.
" 14. Petition of Allen S. Tate filed.
" 14. " " Wm. McFarland filed.
Oct. 8. Replication of John Coleman filed.
" 10. Petition of W. J. Heacker *et al.* filed.
" 10. " " J. H. Cannady *et al.* filed.
Nov. 4. " " Helton & Sanders filed.
" 22. " " Jas. H. Peck filed.
" 29. Amended bill filed.
Dec. 21. Petition of Marion Maples *et al.* filed.
" 24. Petition of Youngstown Bridge Co. *et al* filed.

1893.

Jan'y 9. " " G. McHenderson filed.
" 9. " " John P. Bower *et al.* filed.
Jan'y 13. Petition of M. A. Felts *et al.* filed.
32 " 20. " " H. E. Drew filed.
" 23. " " Jas. T. Shields, Jr., filed.
Jan'y 23. Ans. of M. & C. G. R. R. Co. filed to amended bill.
" 23. " " " " to petition of Hilton & Sanders.
" 23. Petition of James G. Rose filed.
" 23. " " Wm. Harrell *et al.* filed.
Feb'y 13. " " Frank J. Hole filed.
" 28. " " K., C. G. & L. R. R. Co. filed.
" 18. " " J. H. Wester *et al.* "
" 18. " " Jas. S. Gill *et al.* "
March 1. " " Armilda Heacker *et al.* filed.
" 3. Replication to answers to amended bill filed.
" 4. Petition of T. Mellon & Sons filed.
" 4. " " Rob't Dodd *et al.* filed.
" 4. " " Coal & Iron bank *et al.* filed.
" 4. " " Knoxville Provision Co. *et al.* filed.
" 4. " " S. B. Luttrell & Co. filed.
" 14. " " Post, Martin & Co. "

March 22. Answer of Atlantic Trust Co. filed.
" 22. Bill & Ex. "A," " " "
April 13. Petition of Jacob Lay *et al.* filed.
" 21. " " T. J. Smith, receiver, filed.
" 21. " " Jas. A. Harris, comptroller, filed.
" 27. " " W. W. Fennell *et al.* filed.
" 28. " " D. M. Gray *et al.* filed.
May 20. " " Joseph R. Mitchell *et al.* filed.
" 31. " " Woodson Taylor *et al.* filed.
June 9. Answer filed to bill of Atlantic Trust Co.
33 " 20. Report of special master filed.
July 7. " " " on bonds filed.
July 11. Replication of Atlantic Trust Co. filed.
" 12. Petition of John A. Bozeman filed.
" 28. Exceptions of L. C. Kinder *et al.* filed to master's report.
" 28. Transcript of proceedings of stockholders of M. & C. G. R. R. Co. filed.
Aug. 5. Exceptions of compl't to master's report filed.
" 8. Supplemental report of special master filed.
" 7. Exceptions of Allen S. Tate to master's report filed.
1894.
Jan'y 12. Petition of A. X. Shields *et al.* filed.
" 15. Exceptions of M. & C. G. R. R. Co. *et al.* to master's report filed.
" 22. Mortgage of M. & C. G. R. R. Co. to Atlantic Trust Co. filed.
" 25. Report of special master on claim of A. X. Shields *et al.* filed.
" 30. Petition of James G. Rose filed.
" 30. Report of special master on petition of James G. Rose filed.

34 And afterwards, to wit, on the 12th day of Nov., A. D. 1892, an entry was made upon the journal of said court; which said entry is clothed in the words and figures following, to wit:

Be it remembered that at a circuit court of the United States, began and held for the northern division of the eastern district of Tennessee, at the court-house, in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the 11th day, of July, A. D. 1892—present and presiding, the Honorable D. M. Key, judge, etc.—the following proceedings were had, to wit:

SATURDAY MORNING, *November* 12, 1894.

Court met pursuant to adjournment.
Present and presiding: The Honorable D. M. Key, judge, &c.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY.

Came on for hearing in this cause the demurrer of the defendant, The Morristown & Cumberland Gap Railroad Company, to the petition of A. L. Manly and others, William Kimbro and others, and William Harrell and others, and were argued by counsel, and on consideration it was ordered by the court that said demurrers be overruled, and that defendants answer said petition on or before December rules, and defendant may insists upon matters of demurrer in its answer.

On motion of complainant, and it appearing that the bill in this cause is properly filed as a general creditor's bill to wind up
35 the affairs of an insolvent corporation, it is ordered by the court that the bill be sustained as such, and that all creditors of said Morristown & Cumberland Gap Railroad Company and all other persons interested therein come forward and exhibit their demands and have themselves made parties to this bill on or before the 2nd Monday of January next and show in their petitions the nature and extent of their claims and whether they have security or lien therefor; and, if so, the nature thereof and the property upon which their liens rest.

But parties having suits now pending in other courts against said Morristown & Cumberland Gap Railroad Company for rights of way or other claims or demands may prosecute the same to judgment and file their judgments in this court as evidence of the amount and character of their demands.

And the clerk of this court will make publication, notifying all creditors of said Morristown & Cumberland Gap Railroad Company of the contents of this order, which publication will be inserted at least twice a week for the next four weeks in the Knoxville Daily Tribune.

And thereupon complainant moved the court for the restoration of the receivership in this case and the appointment of a receiver to take possession and custody of all the property of said Morristown & Cumberland Gap Railroad Company, and W. S. Whitney is appointed temporary receiver of the railroad and its property and ordered to take custody and control of said railroad, its operations, and all other property of said railroad Co., but his salary and the operating expenses of the road, including repairs and material for the same, and pay and salaries must be paid out of the revenues of the road and shall be no charge upon the corpus of the property, and he will make inventory of all property of said Co. that comes to his hands and file same in this cause, and he will report
36 to the clerk of the court on the first Monday of each month his receipts and expenditures as such receiver. He will be required to give no bond for the present. If it should turn out that the revenues of the road shall be insufficient to meet its expenses the right is reserved to change and modify this order. If said Whitney refuses to operate the road under this order another re-

ceiver will be appointed in his stead. He will be furnished a copy of this order.

37 And afterwards, to wit, on the 29th day of November, A. D. 1892, an amended and supplemental bill was filed in the clerk's office of said court; which said amended and supplemental bill is clothed in the words and figures following, to wit:

Amended and Supplemental Bill.

In the Circuit Court of the United States for the Eastern District (Northern Division) of Tennessee.

JOHN COLEMAN *vs.* MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*	No. 942. Amended and Supplemental Bill.

To the honorable the judges of the court aforesaid:

Your petitioners, John Coleman, a citizen and resident of the State of Kentucky; Thos. H. McKoy, Jr., a citizen and resident of the State of North Carolina; A. L. Manley, J. L. Renfro, James Nance, L. B. Moody, J. H. Renfro, Joe Thomas, J. P. Clark, W. G. Lacy, Marshall West, Geo. W. Renfro, John H. Bruce, and T. B. Craig, William Kimbro, and D. M. Butt, William Harrell, James Turner, Marion Davis, Nancy E. Davis, and Mary E. Roach, W. J. Heacker, S. J. Greenlee, J. C. Brown, and James Droxdale, J. H. Cannady, H. T. Cannaday, Leander Dalton and Amanda Dalton, Hilton and Sanders, and James H. Peck, residents of Grainger and Hamblen counties, Tennessee, respectfully show to the court:

I.

That heretofore, to wit, on 26th May, 1892, complainant, John Coleman, filed his original bill in this court against the defendant
38 The Morristown & Cumberland Gap Railroad Company and Allison, Shafer & Co., citizens of Tennessee, showing that Allison, Shafer & Co. were contractors with said railroad Co. for the construction of its line of railroad in Tennessee, and that said Coleman was a subcontractor under them to lay the steel rails upon the road-bed of said company and surface the track thereof; that he had performed said labor and there was justly due him for said labor therefor the sum of $16,790.07, together with interest thereon, at 8 per cent, from 1 May, 1892; that he had given said railroad Co. due notice that he claimed a lien upon its property for said work and labor done to the amount of said indebtedness within the time prescribed by law, and that said railroad Co. was insolvent and said Allison, Shafer & Co. were also insolvent, but were in possession of said railroad and operating the same; that said railroad Co. was indebted to Allison, Shafer & Co. for more than $50,000.00, and also to other persons for equipments, materials, and rights of way for more than $65,000.00, and therefore complainant filed said

bill, on behalf of himself and other creditors of said railroad Co., as a general creditors' bill to administer the affairs of said insolvent corporation, and prayed for judgment against said Allison, Shafer & Co. for the amount of his debt, and that the same be declared a lien upon said railroad property and franchises and for enforcement of said lien, and also that a receiver should be appointed for said railroad corporation to take custody and control of its property and assets and for general relief.

II.

On 27 July, 1892, said railroad Co. answered said bill, admitting its contract with said Allison, Shafer & Co. for construction and completion of its entire road, and making profert of the construction contract, but this contract it failed to file as aforesaid
39 offered, so that complainants have never seen the same and are not acquainted with its contents, but it alleged that said Allison, Shafer & Co. had agreed to construct said railroad for the entire capital stock of said company and the first-mortgage bonds thereof; that subsequent changes were made in said contract so as to make two classes of capital stock, and also to reissue the mortgage bonds, and defendant alleged that it had paid Allison, Shafer & Co. in full for the construction of said road, and that, therefore, complainant Coleman could have no lien upon said railroad property as subcontractor aforesaid under the act of 29 March, 1883, and that the act of 18 March, 1891, impaired the obligation of said construction contract and was therefore invalid and complainant could have no lien under it. Defendant also denied that it was insolvent or that it owed a large number of debts; called upon complainant for proof of his debt; denied that Allison, Shafer & Co. had possession of the railroad property, and called upon the court generally for protection against said complaint.

III.

By permission of your honors and consent of said railroad Co. your other complainants, Thos. H. McKoy, Jr., and others, between 20 June and 20 November, 1892, filed intervening petitions *vs.* said railroad Co. to obtain the benefit of said general creditors' bill asking to have their liens declared respectively and to have satisfaction of their several claims out of the assets of said railroad property to be administered in said cause, some of which petitions have been answered and all of which are now pending for hearing and adjudication in said cause, and the court has taken jurisdiction of said cause as a general creditors' bill and has made order for publication for all other creditors to file their claims herein and
40 appointed a receiver of said railroad property, who is now in possession of and operating the same.

For fuller account of said bill, answer, petitions, and other proceedings in this cause complainants refer to the original record therein.

IV.

And now by way of supplement to said original bill these complainants respectfully show to the court:

1. That on the 1st day of January, 1891, said Morristown & Cumberland Gap Railroad Co. executed to the Atlantic Trust Co. of New York a certain mortgage or deed of trust whereby it conveyed to the said trust Co. all its property and franchises in the State of Tennessee, and all the tolls, issues, incomes, and profits to be had from said property and franchises, to secure payment of its first-mortgage bonds to be issued by said company to the extent of $1,000,000.00, and that said trust company, as complainants are informed and believe, accepted said conveyance and assumed the duties of trustee thereunder, and that, as complainants are informed and believe, in the month of April, 1891, said railroad company issued bonds under said mortgage to the amount of $1,000,000.00, which bonds were duly certified by said trust company and, under agreement between said railroad Co. and said trust Co., were delivered to said Allison, Shafer & Co. in part compensation for the construction of said railroad.

2. About the same time said railroad Co. issued all its stock, to wit, $1,000,000.00 of capital stock, to said Allison, Shafer & Co. in pursuance of said construction contract and in satisfaction of the balance of compensation due to Allison, Shafer & Co. for the construction and completion of said railroad.

41 The exact terms of said construction contract the complainants do not know, and they call upon said railroad Co. and said Allison, Shafer & Co. to produce and file in this cause a copy of the construction contracts, original and amended, made between them for the construction and completion of said railroad.

They also call upon the defendants to produce and file in this case a copy of the mortgage and deed of trust aforesaid.

V.

Complainants allege and charge that by the terms and legal effect of said construction contract Allison, Shafer & Co. became and were not separate contractors in the usual sense of the term, but general agents of said railroad Co. for the construction of said road, and that all contracts made by them with your complainants and others for work and labor and material and supplies upon said railroad were the contracts of said railroad Co.

Complainants further charge that said construction contracts and the operations thereunder and the execution of said mortgage and the issuance of said bonds was merely a plan or device of said Allison, Shafer & Co. and the promoters of said railroad Co. for the purpose of escaping the usual obligations, duties, and liabilities imposed upon such company by law and for avoiding the liens and rights conferred by law upon complainants and other furnishers, laborers, and subcontractors under said Allison, Shafer & Co. and any other persons who should be creditors of said railroad Co. for

rights of way or materials supplied to said railroad Co. and necessary for its completion and operation.

Complainants further allege and charge that such contract, scheme, plan, and device for the evasion of legal obligation and liability is in fraud of common right as well as the rights of
42 complainants and other creditors, is contrary to public policy, and is therefore void as to the demands of complainants and other creditors of said railroad Co. and of said Allison, Shafer & Co. as the contractors for the construction of the same.

Complainants are therefore advised that independent of and in addition to the liens given to them respectively under the said act of 1891 they are entitled to all the rights conferred upon them by statute and common law under their contracts with Allison, Shafer & Co. as principal contractors with said railroad Co., and these rights and liens, both under the act of 1883 aforesaid and the said act of 1891, are superior to the rights and liens of the mortgage bondholders under the mortgage and deed of trust aforesaid.

VI.

Complainants further charge that the bonds issued and now outstanding under said mortgage and deed of trust are not in the hands of innocent purchasers and *bona fide* holders, but are held by said Allison, Shafer & Co. and their creditors with full knowledge in law and fact by said holders, and also by the trustee aforesaid, of the unlawful character of the plan, scheme, and device aforesaid for the construction of said railroad, and that for this reason also said bondholders can have no lien prior to the rights of your complainants or any of them, as set forth in the original bill and petitions heretofore filed in this cause.

Premises considered, prayer of complainants is—

That they be allowed to file this amended and supplemental bill to the original bill aforesaid, and that said Atlantic Trust Co. of New York be made a party defendant to this suit and be notified,
as provided by statute and rule of this court, of the filing of
43 same and required to make answer thereto; that said Allison, Shafer & Co. be also required to answer and file said construction contract between them and all other agreements pertaining thereto, so that the court may see the nature and character thereof and their conduct under same.

That the rights and equities of all the parties to this suit and all other creditors who shall hereafter become parties hereto be ascertained and declared by the court in this cause, and the liens of the various creditors be enforced by a sale of said railroad property on such terms and at such time as the court shall deem best; that all necessary interlocutory orders and decrees be pronounced, and that satisfaction of your complainants' debts, when ascertained and declared, shall be paid out of the proceeds of the sale of said railroad property; and, if complainants have in any way mistaken their remedy, they pray for such other, further, and different relief as in equity and good conscience they may be entitled to, and for general relief.

INGERSOLL & PEYTON, *Solicitors.*

Henry H. Ingersoll, solicitor for complainants, makes oath that the foregoing bill is true to the best of his knowledge and belief.

HENRY H. INGERSOLL.

Sworn to and subscribed before me this 25 Nov., 1892.

[SEAL.] J. T. CARTER, *Dep. Clerk.*

44 And afterwards, to wit, on the 23rd day of January, A. D. 1893, the petition of James T. Shields, Jr., was filed in the clerk's office of said court; which said petition if clothed in the words and figures following, to wit:

Petition of James T. Shields, Jr.

JOHN COLEMAN
vs.
THE MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*

To the hon. judges of the circuit court of the United States:

Your petitioner, James T. Shields, Jr., a citizen of Knox county, Tennessee, respectfully represents and shows unto your honors as follows:

I.

That on May 26th, 1892, one John Coleman, as sole complainant, filed the original bill in this cause, alleging an indebtedness upon contract against certain defendants, Allison, Shafer & Co., and seeking by garnishment to reach an alleged balance in the hands of the defendants The Morristown & Cumberland Gap Railroad Company and to have the same declared a lien upon said railroad, and for a decree that the property of said corporation be sold in satisfaction thereof.

Such proceedings were had in said cause as that on the 6th day of June, 1892, Frank J. Hoyle was duly appointed receiver of this court of said railway company, who qualified on June 7th and was fully prepared and authorized to enter into the possession of said property and the discharge of the duties incident to said trust.

On June 8th, 1892, said Morristown & Cumberland Gap Railroad Company filed its petition in said cause, in which it prayed
45 that it might be allowed to execute a bond to the complainant Coleman in such terms and conditions as should be fixed by your honors and such as would secure the complainant in any sum which might be finally shown to be due from it to complainant on account of the matters and things alleged in said bill.

Said petition was presented on the same day, to wit, June 8th, 1892, to the Hon. D. M. Key, judge, &c., who made thereon an order in words and figures following:

"Circuit Court of the United States, at Knoxville, for the Northern Division of the Eastern District of Tennessee.

JOHN COLEMAN
vs.
THE MORRISTOWN & CUMBERLAND GAP R. R. Co. *et al.*

The petition of the Morristown & Cumberland Gap Railroad Company having been presented and by me duly considered, it is now ordered that the prayer thereof be granted, and the said Morristown & Cumberland Gap Railroad Company may execute a bond to the complainant, with surety, to be approved by me, that it will pay off and discharge the amount which it may finally appear that the Morristown & Cumberland Gap Railroad Company is liable to complainant by reason of the lien or otherwise on account of work done or materials furnished by him to the Morristown & Cumberland Gap Railroad Company and the costs incurred by complainant in this suit.

Whereupon the petitioner, The Morristown & Cumberland Gap Railroad Company, produced a bond, with J. H. Rathburn
46 as surety, whose solvency having been investigated by me it is ordered that said bond be, and the same is now, approved, and that the order appointing the receiver herein be, and the same is hereby, vacated and the said receiver discharged.

June 8th, 1892.

D. M. KEY, *Judge.*"

(Entered June 8th, 1892, on Book "M," page 6.)

And thereupon on June 9th, 1892, the said Frank J. Hoyle, receiver, etc., turned over said railroad and its belongings to said Morristown and Cumberland Gap Railroad Company and took therefor the receipt of said company, through its general manager, H. E. Drew, as will fully appear by reference to original paper attached to said receiver's report filed in this cause June 10th, 1892.

II.

Said Coleman declares in his said bill that it is a general creditor's bill, and that said Morristown & Cumberland Gap railroad is an insolvent corporation, but petitioner is advised that as the said Coleman was not a judgment creditor of said corporation the circuit courts of the United States ought not to entertain jurisdiction of a creditor's bill at the suit of said Coleman, and he is further advised that upon the execution of a bond by said corporation to pay such judgment as the said Coleman might recover he could not thereafter prosecute said cause other than solely for himself, and that having failed to bring all pending claimants and lienors before the court and having failed to bring before the court the Atlantic Trust Company of New York, which was and is the holder of the legal title to all said company's property and of a duly registered mortgage to secure one million dollars ($1,000,000.00) of bonds of date and
47 record prior to the filing of said bill, and having failed to pray for and secure an order restraining other suits against

said corporation, that said bill wholly fails in all the essential elements of a creditor's bill.

A duly certified copy of said mortgage to the Atlantic Trust Company is hereto appended, marked "Exhibit A," and is prayed to be taken and treated as a part of this petition.

III.

Upon the execution of the bond and the granting of the order vacating the appointment of said receiver, as hereinabove detailed, said Morristown & Cumberland Gap Railroad Company resumed the custody, control, and operation of said railroad and continued therein until the 28th day of Oct., 1892, on which date this petitioner, acting under the authority and appointment of the chancery court of Hamblen county, Tennessee, took possession of said railroad, its belongings, &c., under and by virtue of certain orders and decrees pronounced in the case of Thos. B. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Company, and others, as will more fully appear by reference to a duly certified copy of the bill filed in said court and of the order made thereon, which are hereto appended and prayed to be taken as a part of this petition, marked "Exhibit B."

IV.

Immediately upon the appointment and qualification of your petitioner under the order of said chancery court he took possession of said railroad and its belongings and remained continuously in its possession and operation until the 14th day of November, 1892, when he turned the same over to W. S. Whitney, who claimed to be entitled to the possession of said property under an order made by this court in this cause on the — day of November, 1892,
48 to which order for greater specifications reference is here made.

V.

On Jan'y 2nd, 1893, judgments by default were entered before the master at rules in said case of Thos. B. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Company *et al.*, and on Jan'y 7th, 1893, an order was made in said cause by the chancellor at chambers, requiring this petitioner to intervene in this cause in this court and test and contest the jurisdiction of this court touching the administration of the affairs of said corporation as an insolvent corporation.

Duly certified copies of said orders and decrees are herewith filed, marked Exhibits "3" and "4" respectively, and are prayed to be taken and treated as a part of this petition.

VI.

Your petitioner further shows that when said bill in the case of Thomas B. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Co. *et al.* was filed in said chancery court the said Morristown & Cumberland Gap railroad was in the actual and unob-

structed possession of said line of railroad, and was engaged, through its agents, in its operation, and that the complainants in said bill, being judgment creditors of said corporation and the holders of declared and adjudicated liens upon said line of railway, were entitled to have said property impounded in a court of competent jurisdiction under a proper proceeding instituted for that purpose, and that said proceedings as instituted brings before the court by proper averment the rights of all lienors upon said property, making the owners of such liens parties to said proceeding, and that the institution of said suit and the filing of said bill and the appointment of this receiver as receiver of said corporation on Oct.
49 28th, 1892, were and are in all respects regular, valid, and binding upon said corporation and its creditors, and that said chancery court of Hamblen county acquires and holds jurisdiction of said corporation and of its affairs and is entitled to maintain the same.

Your petitioner further respectfully represents that the release of said corporation's property to the custody and control of its officers and agents upon the execution of said bond and the vacation of the appointment of a receiver, as shown by said order of June 8th, 1892, thereby suspended the custody and jurisdiction of this court over said defendant's line of railway in such manner as to permit another court of concurrent jurisdiction to acquire, under proper proceeding, sole jurisdiction of said corporation and to appoint and maintain a receivership therein.

VII.

During the period when this petitioner had custody of said railroad, *i. e.*, between Oct. 29th and Nov. 14th, 1892, as receiver of said chancery court there came to his hands in his official capacity, including the sum of five hundred and fifty-seven and $\frac{60}{100}$ dollars cash on hand when he took possession, the sum of fourteen hundred twenty-three and $\frac{2}{100}$ dollars.

Petitioner expended in the operation of said road, including the payment of pay-rolls and other charges, the sum of seven hundred and six and $\frac{14}{100}$ dollars, leaving in his hands as such receiver and as the fruits of his management of said property the sum of seven hundred sixteen and $\frac{65}{100}$ dollars. (A statement of said account is hereto appended, marked Exhibit "X.")

This sum has been demanded of petitioner (by W. S. Whitney), the receiver of said railway in this cause in this court, while the complainant- in said chancery cause wherein this petitioner
50 was appointed receiver demand that it be paid into said chancery court as being the legitimate fruits of their litigation.

VIII.

Acting under the order and direction of said chancery court and for the purpose of testing and contesting the jurisdiction of this court, your petitioner prays for leave to file this petition and to become a party to this cause and for leave to be heard upon the question of the regularity of the appointment of this petitioner as receiver

of said railroad company under the orders and decrees of said chancery court and of the insufficiency of complainant's bill in this cause and of the irregularity of the appointment of said W. S. Whitney as receiver of said railroad company in this cause, and that on final hearing it may be adjudged that the appointment of said Whitney as receiver in this court was improvidently made, and that the decrees and orders therein and in that respect may be vacated and the possession of said property may be decreed to be restored to petitioner, and that all other decrees and orders may be entered necessary to the preservation of this petitioner's title and right of possession to said property, and for general relief.

JOHN K. SHIELDS,
TULLY R. CORNICK,
Solicitors.

UNITED STATES OF AMERICA, }
Eastern Dist. of Tenn., } ss:

James T. Shields, Jr., being duly sworn, says that the statements made and contained in the foregoing petition as of his own knowledge are true, and that those stated as upon information and belief he believes to be true.

51 J. T. SHIELDS, JR.

Sworn to and subscribed before me January 23rd, 1893.

R. H. SANSOM,
[SEAL.] *Notary Public, Knox Co., Tenn.*

We acknowledge ourselves bound as sureties for costs on this petition.

Jan. 23, '93.

TULLY R. CORNICK.
JOHN K. SHIELDS.

EXHIBIT "A."

The Morristown & Cumberland Gap railroad.

$100,000 first mortgage, dated Jan. 1st, 1891, due January 2, 1921; interest at six per cent. per annum, payable semi-annually January and July.

This indenture, made this first day of January, 1891, by and between the Morristown & Cumberland Gap Railroad Company, a corporation duly created and existing under and by virtue of the laws of Tennessee, party of the first part, and the Atlantic Trust Company of New York, a corporation created and existing by and under the laws of the State of New York and having its office and place of business in the city of New York, party of the second part, witnesseth:

That, whereas, the Morristown & Cumberland Gap Railroad Company was incorporated under the general laws of the State of Tennessee upon the — day of ——, 1889, as a body politic and vested

with all powers and privileges which may be necessary to carry into effect the purposes and objects of said general laws, for the purpose of building, equipping and operating a railroad from the town of Morristown, Tennessee, to a point on the Knoxville, Cumberland Gap and Louisville railroad, within said State;

52 And, whereas, the said party of the first part has full power and authority under its charter and the acts and laws of the State of Tennessee to borrow money for its corporate purposes, and to pay for, complete, equip, improve and operate its said line of railroad, and in evidence of such loan it may issue and negotiate its corporate bonds, and may secure the same by mortgage or pledge of any of its corporate property;

And, whereas, the board of directors of the said party of the first part, by resolution dated the second day of February, 1891, duly entered on their minutes, resolved to recommend to the stockholders of the party of the first part, the making of the mortgage of its property and franchises for one million dollars and to issue bonds secured by the said mortgage of an aggregate amount of one million dollars;

And, whereas, at a meeting of the stockholders of the Morristown and Cumberland Gap Railroad Company, heretofore duly held in the city of Morristown on the ninth day of April, 1891, notice of which meeting was duly published in a daily newspaper in the cities of Knoxville, Memphis and Nashville, respectively, in the State of Tennessee, sixty days prior to the date of such meeting, and after full discussion the following resolution was adopted by the unanimous vote of all stockholders then present, and voting, amounting in the aggregate to more than three-fourths of the total amount of the capital stock of the Morristown and Cumberland Gap Railroad Company outstanding, which resolution is as follows, to wit:

"Resolved, That the Morristown and Cumberland Gap Railroad Company mortgage its entire line of railroad and all its rights, property, franchises, lands, buildings and premises, together with all the rolling stock and all the appurtenances thereunto belonging, and all its property of whatsoever description and wheresoever situated, now held or which may hereafter be acquired, to secure its

53 certain issue of bonds hereinafter referred to; and that the president and secretary and treasurer be and are hereby authorized and directed to execute and deliver and cause to be recorded, a mortgage in good and legal form, in the name of the company, under its corporate seal, conveying its line of road, its property and appurtenances so held or hereafter to be held, to the Atlantic Trust Company of New York, as trustee, to secure the payment by the company, of its mortgage bonds to be issued by the company under said mortgage upon its said road from the city of Morristown to a point on the Knoxville, Cumberland Gap and Louisville railway, in denominations of one thousand dollars each, amounting in the aggregate to one million dollars, and that the president and secretary and treasurer are further authorized to sign, seal and attest the bonds of the company issued in accordance with this resolution, which shall be numbered from one consecutively upwards, and to

bear interest at the rate of six per cent. per annum from July 1, 1891, payable in semi-annual installments on the first day of January and July in each year, beginning on the first day of July, 1891, at the office of the Atlantic Trust Company in the city of New York, which bonds shall be in form and manner following, namely:

UNITED STATES OF AMERICA, *the State of Tennessee.*

$1,000.00. $1,000.00.

The Morristown and Cumberland Gap Railroad Company First-mortgage 6% Gold Bonds.

The Morristown and Cumberland Gap Railroad Company promises to pay to the bearer the sum of one thousand dollars at the office of the Atlantic Trust Company, in the city of New York, in gold coin of the United States of America, of the present
54 standard of weight and fineness, on the first day of January in the year nineteen hundred and twenty-one, with interest thereon in the meantime at the rate of six per cent. per annum, payable semi-annually in like gold coin at the same place, on the surrender of the annexed coupons.

This bond is one of the series of this date, aggregating one million dollars, each for one thousand dollars, numbered from one to one thousand inclusive, secured by and subject to all the provisions of a first mortgage or deed of trust dated the 1st day of January, 1891, conveying and assigning to the Atlantic Trust Company of New York, as trustee, all the entire railways, rolling stock, equipment, franchises, leaseholds, lands, property and income of said railroad company as specified in said deed.

This bond is not to become obligatory on the company until the certificate endorsed hereon is signed by the trustee.

In testimony whereof, the said railroad company has hereunto caused its corporate seal to be affixed, and caused the same to be signed by its president and treasurer on the first day of January, in the year eighteen hundred and ninety-one.

——— ———, *President.*

Attest: ——— ———, *Treasurer.*

Coupon.

$30. The Morristown and Cumberland Gap Railroad Company will pay the bearer at the office of the Atlantic Trust Company in New York city thirty dollars in U. S. gold coin on the first day of ———, being six months' interest then due on its first mortgage.
55 Bond No. —.

——— ———,
Secretary & Treasurer.

Trustee's Certificate.

The Atlantic Trust Company hereby certifies that this bond is one of series of first-mortgage bonds mentioned in the mortgage

or deed of trust bearing date the first day of January, 1891, referred to therein.

THE ATLANTIC TRUST COMPANY.
—— ——, *President.*

Now, therefore, in consideration of the premises, and of one dollar in hand paid by the party of the second part to the party of the first part, of which the receipt is hereby acknowledged, and in order to secure the payment of the principal and interest of the bonds issued hereunder according to the terms hereof without preference or priority, the party of the first part hath granted, bargained, sold, assigned, transferred and conveyed, and hereby doth grant, bargain, sell, assign, transfer and convey unto the party of the second part, and its successor or successors in the trust hereby created, and its and their assigns forever the property, rights and franchises, which are more particularly described as follows:

All and singular its entire main line of railway, now constructed or hereafter to be constructed from the city of Morristown in the State of Tennessee through the counties, of Hamblen, Knox and Grainger to a point on the line of Knoxville, Cumberland Gap and Louisville, railroad near to the station at Coryton, a distance of forty miles, or thereabouts, with all future branches thereof, and the tracks of said railroad or railway, and the superstructure and the
56 rails laid and to be laid thereon, and all the appurtenances thereof, and all the sidings, turnouts, bridges, viaducts, culverts, ways, and rights of way, and lands and premises whatsoever, with the improvements thereon, and all structures, bridges, fences, walls, and fixtures belong- to and all lands and real estate provided or designed to be used now or hereafter for depots, and all the buildings and repair shops, car-houses, engine-houses, and other buildings and structures whatsoever belonging or appertaining, to be used, or which may be hereafter used for or in connection with said railroad.

And also all the rolling stock of said railroad, and all locomotives, passenger cars, freight cars and all other cars, carriages, tools, and machinery, fuel, rails, and materials and things of whatsoever kind, whether for or in connection with the road itself, or its rolling stock, or capital or its work or machine shops, or its work of any kind, now belonging, appertaining to or used by or assigned for the purpose of said railroad for the use, maintenance or operation thereof, and also all the lands and real estate, situate in the State of Tennessee, with the appurtenances thereof, which the said party of the first part may hereafter acquire for the purpose of or in connection with its above-mentioned line of railroad or any straightening or alterating of the line of the same, or for the purposes of or designs for depots, grounds or stations (or sites for shops, car-houses or buildings or improvements of any kind whatsoever, used or intended to be used for the purpose of said railroad). And all and singular the rights, franchises, easements, rights, privileges, interest, incomes, rents, rolls, profits, benefits, and advantages belonging or appertaining to or connected with said railroad company, or to arise from or

accrue from said railroad and branches, together with all and singular, the tenements, hereditaments, appurtenances, and premises aforesaid, or any of them or any thereof, and the reversion and reversions, remainder and remainders, rents, issues, and
57 profits thereof, and all the estate, right, title and interest and property, possession, claim and demand whatsoever, at law or in equity of the said party of the first part of and to the same and every part and parcel thereof.

To have and to hold the above-described premises, property, rights, franchises, and appurtenances unto the said party of the second part, its successors and assigns forever,

In trust, nevertheless, for the equal *pro rata*, use, benefit and security of all persons or corporations who shall be or become the owners or lawful holders of any of the said bonds issued hereunder, without any preference or priority of one bond over another of or by reason of priority in time of the issue or negotiation thereof, or otherwise, for the uses and purposes hereinafter declared, and upon the trusts hereinafter set forth, to wit:

First. It is covenanted and agreed by and between the parties hereto, that until default shall be made by the said party of the first part, its successors or assigns, in the payment of the principal of said bonds or of the interest thereon in the manner herein provided, or of some of it, or the non-performance of some of the covenants, stipulations and provisions of the party of the first part in this indenture contained: said party of the first part, its successors, and assigns shall be suffered and permitted to possess and enjoy the said premises, with all their appurtenances, and all and singular the rights, property, and purchases hereinbefore described, and to receive, take and use the tolls, increase, income, earnings and profits thereof while the said party of the first part shall remain in possession and there shall be no existing default in the payment of said principal or interest in the manner herein prescribed, or in the performance of the stipulations conditions and provisions on the part of the said party of the first part in this indenture contained.

58 The said party of the second part, or its successors in the said trust, shall have full power and authority, upon the application in writing of the board of directors of the party of the first part to release from the lien and operation of this instrument, and from the covenants and stipulations herein contained, any of the mortgaged property,

Provided, however, that under this authority no portion of the main track of the said railroad, nor any of the principal depots or terminal facilities or other property of the said railroad, essential to the due operation of the same, shall be so released and the said party of the first part shall have full power from time to time to sell and dispose of such portion of the equipment, machinery and implements, which shall have been acquired for the use of said railroad, which shall have become worn out or unfit for such use, or which shall have become, in the judgment of the company, more valuable for the purpose of being disposed of by sale than for the purpose of being retained in use or operation by the company. And

it is hereby agreed that in the event of any such sale as herein last provided, the company will either invest the proceeds of such sale in property which shall be made subject to the lien of this mortgage or will deposit the same with the trustee, to be held by it as a part security for the bonds hereby intended to be secured.

Second. The said party of the first part doth hereby covenant, promise and agree that the said party of the first part while remaining in the possession of the said railroad shall and will from time to time pay and discharge all taxes, assessments and governmental charges, lawfully imposed upon the said lines, or railroads and branches, and other hereby mortgaged premises, or any part thereof, the lien of which might or could be held to be prior to the lien of these presents, so that the priority of this mortgage shall be
59 duly preserved, and that the said party of the first part shall not and will not do or suffer any matter or thing whatsoever, whereby the lien of this indenture or mortgage might or could be impaired, until the said bonds hereby secured, with the interest thereon accrued, shall be fully paid and satisfied.

Third. It is hereby covenanted, understood and agreed that these presents are upon the express condition that if the said party of the first part shall well and truly pay and satisfy the bonds hereby intended to be secured as aforesaid, and the interest from time to time accruing thereon, according to the tenor and effect of said bonds, the coupons accompanying the same, and the provisions herein contained, then this indenture and all and singular the estates, rights and interests hereby granted, to or vested in the said party of the second part, shall cease, determine and become of no effect.

Fourth. All the bonds of the present issue secured hereby, amounting in the aggregate to $1,000,000.00 shall be delivered by the trustee, party of the second part, having first been duly certified, to the railroad company, party of the first part, for its general use and benefit.

Fifth. It is mutually understood and agreed that the interest upon the bonds hereinbefore mentioned and described, and secured by this instrument, which are to be numbered from one consecutively upwards, is to be recorded from the date hereof, and is to become payable on the first days of January and July in each year. If default shall be made in the payment of the principal or interest monies mentioned in said bonds or coupons, or any or either of them, or any part thereof, according to the tenor and effect of said bonds or coupons, or either of them as herein provided, the trustee may, and upon being requested by the holders of one-third of the said bonds then outstanding, in respect of which, or of the
60 coupons upon which said default may have been made and upon being properly indemnified for such costs and expenses as may be incurred in acting in pursuance of such request, shall proceed by suit at law or in equity, as the trustee may be advised by counsel, to enforce payment of said bonds, or to foreclose this mortgage and to sell the railroads, lands, franchises, appurtenances and property of whatsoever kind or description, wherever situated, hereby conveyed, or subject to the provisions hereof, after the judg-

ment of a court of competent jurisdiction, but it is hereby expressly understood, and agreed that this mortgage shall not be enforced or enforceable until three months after there shall have been a failure to pay principal or interest of said bonds or coupons.

It is further agreed that in case default shall be made in the payment of interest upon the bonds, secured hereby or any of them, that such default shall continue for the period of three months, then in that case the principal of said bonds shall at the option of the trustee immediately become due and payable.

Sixth. In case the trustee shall proceed by suit or suits at equity or at law the said trustee or its successors shall be entitled to have the premises, estate, franchises, rights, and privileges, or property hereby granted and conveyed, or intended to be so sold by judicial sale under the order of the court or courts of competent jurisdiction, for or towards the satisfaction of the principal and interest due or owing upon the then outstanding bonds, issued under or entitled to the benefit of the security of this mortgage, and for the enforcement of the rights, liens and securities of the trustee, and the bondholders, and shall be entitled pending any such suit or proceedings to a receivership of such premises, estate, franchises, rights, privileges and property, and of the fares, freights, tolls, earnings, issues, profits and income thereof. And it is hereby further provided, declared and agreed that in case of such sale being made, of
61 the said premises, properties, rights and franchises, hereby mortgaged, or any part thereof, in enforcement of the mortgage lien hereby created, the purchaser or purchasers at such sale shall be entitled, in making settlement for payment of the purchase-money bidden at such sale to turn in or use toward the payment of such purchase-money the bonds held by such purchaser, or purchasers; to or towards the payment whereof, the net proceeds of such sale shall be legally applicable, counting such bonds of the amount of the same so turned into use for such purposes, at such sum as shall be payable out of the net proceeds of such sale to said purchaser or purchasers, holder or holders of such bonds, for his or their just share or proportion of such net proceeds, due receipts and acknowledgements being thereupon given by the holders of such bonds for the amounts thus realized thereon by reason of turning in or using the same as aforesaid, and the said bonds being, if the net proceeds of such sale shall be sufficient to extinguish them, delivered up to the person or persons making the same and entitled to receive payment of the purchase-money; or if such proceeds shall only suffice to make a partial payment of such bonds, the endorsement being made upon said bonds of the amount so realized on account thereof.

Seventh. The party of the first part for itself, its successors and assigns, doth hereby covenant, grant and agree to and with the said party of the second part and its successors in this trust, and to and with the respective persons and corporations who shall at any time become holders of the said bonds hereby secured or any part of them, that the said party of the first part, its successors, and assigns, shall and will at any time from time to time hereafter upon

request make execute and deliver all such further and other acts, deeds and things as shall be reasonable, advised or required to effectuate the intention of these presents, and to assume and confirm to the said parties of the second part or their successors,
62 all and singular the property, and estate, real and personal, and rights privileges and franchises, hereinbefore described, and hereby intended to be granted, and so as to render the same, and especially such portions thereof as shall be hereafter required by the said party of the first part available for the security, and satisfaction of the said bonds, according to the intent and purposes herein expressed.

Eighth. It is hereby further provided, declared and agreed that in case of any vacancy in the office of trustee hereunder, arising from resignation, incapacity or any other cause, it may be filled by the appointment of one or more competent persons or a corporation as a new trustee, by an instrument or concurrent instruments in writing, executed under the hands and seals of the majority in interest of the holders of the then outstanding bonds secured hereby, or their attorneys-in-fact thereunder authorized; and that an appointment so made shall supersede, and take precedence of any appointment, made in any other way whatever.

In case after notice of such vacancy and of the present right of bondholders to fill the same shall have been published in two newspapers of general circulation in New York for sixty days the bondholders shall fail to fill such vacancy by an appointment made as hereinbefore prescribed, then the board of directors of the party of the first part shall make a temporary appointment for such vacancy, which shall continue until the holders of the majority in interest of the then outstanding bonds secured hereby, or their attorneys-in-fact thereunto authorized, shall designate a new trustee to act thereunder.

And it is hereby covenanted and agreed that any new trustee appointed as aforesaid shall upon appointment, without any further act, deed or conveyance, become and be vested with all the estate, trusts, rights, powers and duties of the trustee hereunder; but nevertheless the respective parties hereto and their respective
63 successors and assigns, shall and will upon request, make execute and deliver all such releases, conveyances and assurances, as shall be appropriate to vest in and confirm and assure to such new trustee, such estates, trusts, rights, powers and duties according to the intents above expressed.

Ninth. It is further understood and agreed by and between the parties of these presents, that the trustee under this indenture is entitled to reasonable compensation for all services rendered thereunder.

And the said party of the second part does hereby accept the trust conferred upon it by these presents, but with the understanding and it is hereby expressly provided and agreed that it shall not be liable or accountable for the acts, default or neglect of any agent, or agents who may be appointed, under and by virtue of or for the purposes of these presents, to any of the matter or things, herein provided

for, and that no other liability or responsibility shall, under any circumstance be borne by or attached to it that for the exercise of reasonable diligence only in the performance of said trust, when action on its part for that purpose shall become necessary.

Tenth. The owner or holder of any bond of the issue secured hereby shall be entitled at any time to have the same registered upon the book of the company. Such registry shall be noted on the book by the company's transfer agent, and thereafter no transfer of the bonds so registered shall be valid unless the same be made upon the books of the company by the registered owner, and be similarly noted in the bond, but the same may be discharged from registry by being transferred to the bearer, after which it shall be transferable by delivery in the same manner as if it had not been registered, and may, however, after being so discharged from registration, again be registered as herein provided.

And the party of the first part doth hereby covenant and
64 agree to and with the said party of the second part, and its successors in this trust and to and with all persons, and corporations who or which shall become or be lawful owners or holders of any of the bonds issued or secured hereunder, that so long as any of said bonds shall remain outstanding the said party of the first part shall and will maintain, and keep up an office or agency in the city of New York, at which office or agency, bonds may be registered and transferred, in the manner herein provided for.

In testimony whereof, the Morristown and Cumberland Gap Railroad Company, the said party of the first part, has caused its corporate name to be hereunto signed by its president, and its corporate seal, attested by its secretary to be hereunto affixed, and the trustee, the party of the second, has signified its acceptance of the trust hereby created by affixing hereunto its corporate name and seal.

MORRISTOWN & CUMBERLAND GAP
RAILROAD COMPANY,
[SEAL.] By J. C. FAWCETT, *President.*

Attest: C. R. JOHNSON, *Sec'y.*

STATE OF KENTUCKY, } *ss.*
County of Jefferson, City of Louisville, }

Be it remembered that on this eighteenth day of April, A. D. 1891, personally appeared before me, Harry Stucky, a commissioner for Tennessee residing in Louisville, Kentucky, the within-named bargainor, The Morristown & Cumberland Gap Railroad Company, by its president, J. W. Fawcett, with whom I am personally acquainted, who, by virtue of the authority vested in him by
65 the board of directors of said corporation, acknowledged that he executed the within instrument for the purposes therein contained.

Witness the signature of said corporation by its president and the

seal of the corporation thereto affixed by order of said board of directors.

MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY,

[SEAL.] By J. C. FAWCETT, *President.*

Given under my hand and official seal the day and date aforesaid.

[SEAL.] HARRY STUCKY,

A Commissioner for Tennessee in Louisville, Kentucky.

STATE OF TENNESSEE, }
Grainger County. }

REGISTER'S OFFICE, *April* 20, 1891.

I, John G. Waller, register for said county, do certify that the foregoing instrument and deed and certificate are registered in said office in Book No. 3, pages 52 *et sequi.*; that they were received April 20th, 1891, at 7 o'clock a. m. and entered in Note Book "B," page 67.

I also register this certificate of notation and registration.

J. G. WALLER.

(No official seal.)

STATE OF TENNESSEE, }
Grainger County. }

I, J. G. Waller, register in and for said county aforesaid, do hereby certify that the foregoing and annexed transcript is a true and
66 perfect copy of the mortgage or instrument of writing of Morristown and Cumberland Gap Railroad Company to the Atlantic Trust Company, as the same appears of record in my office in Volume of Trusts No. 3.

Witness my hand at office, in Rutledge, this Sept. 23rd, 1891.

J. G. WALLER, *Register.*

(No official seal.)

EXHIBIT "B."

To the Hon. John P. Smith, chancellor, etc., presiding in the chancery court at Morristown, Tennessee:

THOMAS MELLON, ROBERT B. MELLON, and ANDREW W. MELLON, partners in trade under the firm name and style of T. Mellon & Sons, citizens of Allegheny county, Penn.; John H. Felton, Wm. McConnell, J. M. Henry, Eliza Henry, W. A. Jarnagin, Rachel Jarnagin, J. M. Jarnagin, D. H. Bruce, adm'r of J. G. Walker; Thomas B. Crosby, J. H. Herrell, S. F. Brabson, R. C. Bunch, and J. H. Campbell, all citizens of Grainger county, Tennessee, complainants,

vs.

THE MORRISTOWN AND CUMBERLAND GAP RAILROAD COMPANY, a corporation under the laws of Tenn., with its principal office in Hamblen county, in said State; C. J. Allison, F. H. Allison, and

J. J. Shafer, partners in trade, composing the firm of Allison, Shafer & Co., non-residents of the State of Tennessee, but temporarily in Hamblen county; Brayton Ives, The Western National Bank, a corporation under the laws of the United States, and The Atlantic Trust Company, a corporation under the laws of the State of New York, all non-residents of the State of Tennessee,
67 being citizens of the State of New York; The Coal & Iron Bank, a corporation under the laws of Kentucky, and John Coleman, both being non-residents of the State of Tennessee and residents of the State of Kentucky; J. F. Harper, a citizen of the State of Virginia; Thos. H. McKoy, a resident of the State of North Carolina; The J. I. Case Threshing Machine Company, a corporation under the laws of Wisconsin; The Youngstown Bridge Company, a corporation under the laws of the State of Ohio, both being non-residents of the State of Tennessee; H. E. Smith, a citizen of the State of Illinois, being a resident of the city of Chicago; The Knoxville, Cumberland Gap & Louisville Railway Company and The Knoxville Iron Company, both being corporations under the laws of Tennessee, with their principal offices at Knoxville, in said State; W. G. Lacy, John H. Bruce, T. D. Craig, D. M. Butt, Wm. Kimbrough, Wm. McFarland, F. J. Moser, J. B. Shields, D. E. Shields, H. W. Shields, W. D. Gammon, all citizens of Hamblen county, Tennessee; G. W. Renfro, James H. Renfro, J. S. Clark, Marshal West, Joseph Thomas, C. L. Manly, James Nance, L. B. Moody, James Turner, Wm. Herrell, Maria Davis, M. D. Harris, G. B. Mitchell, John P. Bowen, Jane Roberts, D. M. Gray, J. M. Sawyers; Madison Academy, a corporation under the laws of Tenn.; R. T. Vance, N. T. Rucker, W. Early and wife, Margaret Early; J. T. Rutherford, John Phillips, J. M. Lowe, J. W. Bozeman, J. T. Gill, Sallie B. Gill, W. T. Murry, James T. Shields, Patrick Shirley, D. H. Bruce, Jennie Bruce, J. H. Landin, C. V. Ellis, C. Y. Crawford, B. F. Atkinson, Wm. Atkinson, Sarah Atkinson, J. F. Hayworth, Thos. Baylor, T. W. Joyce, Annie Smith, Woodson Taylor, W. F. N. Trout, A. X. Shields, Annie Shields, Elizabeth Shields, W. T. Phillips, J. O. Phillips, J. T. Phillips, J. F. Rucker, E. M. Rucker, W. H. Perron, Thomas F. Davis, John Montgomery, Lucindy Campbell, as representing a demand held by a large number of
68 tenants in common; W. Z. Hammer, Enos Hammer, J. H. Mitchell, Joseph Mitchell, G. McHenderson, Allen S. Tate, Wm. Aiken, J. L. Acuff, as representing himself and numerous tenants in common, all citizens of Grainger county, Tennessee, defendants.

Complainants respectfully show:

I.

That the defendant The Morristown & Cumberland Gap R. R. Co. is a railway corporation under the laws of the State of Tennessee, and as such is the owner of a line of railway extending from an intersection with the tracks of the E. T., V. & Ga. R'y Co. at Morris-

town, in Hamblen county, Tenn., by way of Bean's Station and Rutledge, through Grainger county, Tennessee, to Corryton, in Knox county, Tennessee, and requisite depots, side tracks, switches, and turnouts, the whole line of road being about 42 miles in extent.

Said line of railroad is also equipped with sundry locomotives, passenger and freight cars, and oth-r rolling stock, which complainants suppose is held under some car-trust contract or lease, and it also has some construction and repair tools and office and depot furniture, and which property constitutes a whole of the assets of said corporation.

2.

That said railroad was organized and promoted by the defendants Allison, Shafer & Co. under a contract by which they were to acquire every dollar of the stock, bonds, and subsidies of said road in payment for its construction, as will more fully appear by reference to the contract between said firm and said corporation touching said construction, a copy of which is hereto appended, marked Exhibit "A," and prayed to be taken and treated as a part of this bill, though not to be copied.

3.

69 Said railroad company and said Allison, Shafer & Co. have become so blended in said work of construction as to be indistinguishable, the said firm never having maintained the relation of independent contractors, but, on the contrary, they were members of the directory of said corporation and employed and paid and discharged its officers and agents and at all times directed and controlled its affairs as being the sole owners thereof, one of said firm, C. J. Allison, being the chief engineer of construction during a considerable period when construction was in progress, being the sole arbiter touching all questions arising between said firm and said corporation, another member, F. H. Allison, being vice-president during considerable portion of said time and afterwards president.

4.

That said corporation never had any paid-up capital except $25,000.00 of subsidy received from Hamblen county, the whole of its capital stock and all its authorized bonded indebtedness being issued to said firm in consideration of said construction, the firm expecting to deliver of the stock thus issued to it the amounts subscribed by the several counties and towns in exchange for the bonds of such subscribers.

5.

That all of the bonds, to wit, $100,000.00, and all of the stock, to wit, $1,000,000.00, thus to be issued were issued and delivered to said firm as said work progressed in advance of the completion of the work and were hypothecated or sold by said firm for amounts sufficient to pay for said work of construction, and that the unpaid

demands against said firm and against said corporation, and
70 which constitute liens upon said road superior to said bonded debt, which is of course superior to any shareholder's right, amount to many thousand dollars, approximately the value of the entire road, and which will exhaust said property to the utter exclusion of all bondholders' rights and to the probable exclusion of that class of creditors whose demands, though not liens in law, upon the property of the road are superior in point of dignity and right of satisfaction under the act of 1877 to the right of the bondholders, and compl'ts therefore charge that said railway company and said firm of Allison, Shafer & Company, who are primarily liable for all construction demands, are wholly insolvent.

6.

Compl'ts further show unto your honors that all of them except S. M. Brabson and R. C. Bunch are creditors of the def'ts The Morristown & Cumberland Gap R. R. Co., holding and owning unsatisfied judgments recovered upon the indebtedness and liabilities and in sums as follows: T. Mellon & Sons are the owners, holding the same by a written assignment of a judgment recovered by Samuel T. Shields on the 24th day of August, 1892, in the circuit court of Hamblen county against the d'f'ts Allison, Shafer & Co., as principal debtors, and the said railroad company as garnishees for balance due him for building bridges, trestles, etc., upon the line of said def'ts' road for $5,174.10 and costs of suit, to secure which a lien has been fixed by proper notice upon the said railroad, and to pay which the said road was in the same judgment ordered and decreed to be sold, which decree, however, is unexecuted.

Compl't John H. Helton has a judgment recovered in the circuit court of Grainger county against the M'town and Cumberland Gap R. R. Co. upon Ap'l 9, 1892, for $145.33 debt and $21.52 costs. Compl't Wm. McConnell has a judgment recovered in said court against the said def't upon Ap'l 9, 1892, for $700, and compl'ts James M.
71 Henry and Eliza Henry have a judgment recovered by them against said def't in said court on July 12, 1892, for $1,022.56 and $225.12 costs. Compl'ts were advised that these were entitled to a judgment in said case for the further sum of $— upon a special verdict rendered by the jury, and upon the refusal of the court to enter a judgment in their favor for the same they prosecuted an appeal in the nature of a writ of error to the supreme court at Knoxville from the action of the circuit court in the matter, where the same is now pending.

The judgment for $1,022.56 and costs remains in full force and effect. Compl'ts W. A. Jarnagin, Rachel Jarnagin, and J. M. Jarnagin, as executors of Nelson Jarnagin, dec'd, recovered judgment against said def't in said court on Aug't 3, 1892, for $1,120 and costs, amounting to $82.30. Compl'ts D. H. Bruce, as the adm'r of the estate of J. G. Walker, dec'd, has similar judgment, recovered on July 14, 1892, in said court for the sum of $1,205 and costs of suit, amounting to $101.81. Compl't Thos. B. Crosby has similar judgment, recovered in said court on July 12, 1892, for $2,410 and cost

of suit, $137.49. Compl't J. H. Herrell has similar judgment in said court, recovered July 12, 1892, for $245.25 and costs of suit, $18.95. Complainant J. H. Campbell has a similar judgment, recovered Aug. 1, 1892, for 204 and cost, $9.70. Execution has been issued upon all of these judgments and have been returned *nulla bona*, said defendant railroad Co. having no property whatever subject to seizure by execution. Compl't S. F. Brabson holds a note made to him on July 10, 1891, for $150, bearing interest from Jan. 1, 1891, by the def'd't railroad Co. Complainant H. C. Bunch holds a similar note made to him July 10, 1891, bearing interest from date, for $300.

All of said foregoing demands against said Morristown & C. G. R. R. Co. which have been reduced to judgment as aforesaid, except the judgment assigned by S. T. Shields to compl'ts T.
72 Mellon & Sons, are for rights of way that ought to have been paid and discharged before the work of construction was commenced.

So also *was* the demands due the complt's Brabson & Bunch, with each of whom the amount due them respectively for said rights of way has been agreed upon and notes given thereupon upon express condition that title shall not pass until the amount so determined upon has been paid and discharged in additions to the demands thus adjudged and agreed upon in favor of the several compl'ts named on account of rights of way. There are now pending in the circuit courts of Grainger and Hamblen counties either condemnation proceedings to acquire rights of way or action for damages for rights of way entered upon and appropriated without condemnation in favor of a large number of persons, to wit: The def'ts J. F. Harper, J. B. Shields, D. E. Shields, H. W. Shields, W. D. Gammon, J. H. Renfro, J. P. Bowen, M. D. Harris, John Harris, Jane Roberts, J. M. Sawyers, D. M. Gray, Madison Academy, N. I. Rucker, W. Easley, J. T. Rutherford, John Phillips, J. M. Lowe, J. H. Bozeman, James S. Gill, S. B. Gill, W. T. Murray, J. T. Shields, Pat. Shirley, C. B. Ellis, D. H. Bruce, J. H. Landis, H. F. Atkinson, J. F. Hayworth, Thos. Baylor, T. W. Joyce, Woodson Taylor, W. F. Trout, A. X. Shields, Annie Smith, W. T. Phillips, H. W. Perrow, T. F. Davis, Lucinda Campbell, W. Z. Hammer, Enos Hammer, J. H. Mitchell, Joseph Mitchell, Wm. Aiken, J. L. Acuff.

Each of the said defendants or sets of defendants are prosecuting or defending separate causes of action, which will result in separate judgments, and all of such lien and dignity, as compl'ts are advised, as that said R. R. Co. must pay and discharge same or, at the option of the interested parties, suspend all operations of said railway and thus defeat the whole scope and purpose for which said corporation was chartered and said rights of way acquired, and compl'ts are advised that the judgments and just demands against said railway Co. for
73 and on account of rights of way are superior to all other demands against said corporation. Next in point of dignity and right of satisfaction are, as compl'ts are advised, the construction and material men's lien only, one of which has been reduced to judgment, viz., that of S. T. Shields, assigned to compl't *to* T. Mellon &

Sons, and which, as a matter of equity, ought to be paid in full before any other claim of equal dignity is paid anything, because that the said demand has not only been reduced to judgment, but the whole of the railroad Co.'s property has been ordered to be sold and will be sold on Oct. 29th, 1892, unless compl'ts T. Mellon & Sons shall suspend said sale, and from the proceeds of said sale compl'ts Mellon & Sons, in the absence of a proceeding to marshal the assets and liens, would be entitled to the full satisfaction of their demand to the exclusion of all persons holding claims of similar or inferior dignity, and because of such fact and the lien of this said judgment they claim that said demand should be paid in full in preference to all others of the same class, as stated. No others of that class have been reduced to judgment and compl'ts cannot charge or show what amounts will ultimately be deemed to belong thereto, but demands are being presented against said road by the following-named persons, all claiming that they have statutory liens or are in equity entitled to be subrogated to the rights of and enforced demands which such creditor has discharged and which *has* been secured by liens, to wit: Compl'ts T. Mellon & Sons are claiming in their independent bill filed in the chancery court at Morristown as belonging to this class the sum of $81,000, with interest thereon from Oct. 28, 1891, while the def't The Knoxville Iron Co. claims about $7,000 and the defendant The Knoxville, Cumberland Gap & Louisville R. R. Co. claims about $5,200, for the recovery of which said demands independent suits are being prosecuted by each of said def'ts in the chancery court at Knoxville, Tenn., against said railroad Co. and Allison, Shafer & Co., but neither of which causes is yet ready for hearing. Other demands are being set up
74 against said corporation in the U. S. circuit court for the northern division of the eastern district of Tennessee in the case pending in said court brought by def'd't John Coleman against said corporation and Allison, Shafer & Company as follows: John Coleman, about $3500; G. W. Renfro, about $350; J. H. Renfro, about $140; W. G. Lacy, $114; J. P. Clark, $65; M. West, $9.50; J. Thomas, $34.00; A. L. Manly, $176; J. H. Bruce, $110; T. B. Craig, $133; Renfro & Nance, $771; L. B. Moody, $54; Thos. H. McCoy, $5444; D. M. Butt, $66; Wm. Kimbrough, $84; A. S. Tate, $1315; F. J. Moser, $3500; Wm. McFarland, $1219, and other small claims. Said bill may have been intended to be filed primarily as a general creditors' bill, but the other creditors were not made parties; their several equities, rights, priorities, and preferences are not stated; no restraining order was granted, and upon the appointment of a receiver of said road bond was given to secure the payment of such judgment as the said Coleman might ultimately recover, and the order appointing a receiver was thereupon vacated before any intervention had been made by any other creditor. No order has ever been made in said cause requiring creditors of said corporation to intervene or restraining bringing of independent suits against said corporation, and compl'ts are advised that said proceedings *has* wholly failed to acquire jurisdiction of said corporation for the administration of its affairs as an insolvent

concern, both for want of necessary parties and because of the course taken therein touching the surrender of the custody of said corporation's property under the order vacating the receivership and the failure to restrain the bringing of other suits. The corporation itself and its general creditors have not submitted the affairs of said corporation to said court under said bill. In addition to the foregoing demands which several claimants thereof allege constitute liens upon said railway superior to all others there is another class who furnish material or labor or who suffered damages
75 because of personal injuries sustained whose demands compl'ts are advised are superior to the right of bondholders, and to which class the def'ts The Youngstown Bridge Co., claiming some $18,000, now in suit in this court, and John Montgomery, claiming $5,000 damages in the suit in the circuit court of Grainger county, belong.

A number of the demands now in suit under which the several claimants seek to assert liens may utimately be adjudged to belong to this class. In addition to the foregoing liabilities said corporation paid to Allison, Shafer & Company its first-mortgage 30-year 6% gold bonds, maturing in 1921, for the sum of $1,000,000, securing same by a general mortgage upon all of its property and franchises to the d'f'd't The Atlantic Trust Company of New York, which said bonds have all been disposed of by said firm, either by sale or by hypothecation, and are now outstanding liabilities against said corporation.

Compl'ts T. Mellon & Sons hold $168,000 of said bonds, as is fully set out in *this* bill heretofore filed in this court. The def'ts The Western National Bank and Brayton Ives, one or both, hold $525,000 thereof, and the def't The Coal & Iron Bank of Middlesborough holds a large number, possibly all of the remainder. If there are other holders, compl'ts do not know their names. The amount of capital stock authorized to be issued was $1,000,000, all of which was delivered by said company to Allison, Shafer & Co. and which has been hypothecated by them. Compl'ts understand that there has been in fact a stock issue of exceeding $1,300,000, a portion of which is of necessity a fraudulent overissue, but under what sort of pretense the same was made compl'ts cannot say, and they presume that in view of the fact that said corporation is wholly and utterly insolvent such fact of overissue of stock will not be material in this controversy.

Complainants allege that no interest has ever been paid upon any of said bonds, and that because of such default said railroad is by the terms of the mortgage executed to secure the same now
76 subject to seizure and foreclosure. The def'ts Allison, Shafer & Company, The Western National Bank, and said Ives claim, as compl'ts are informed, that the subscription made by Grainger county and the town of Morristown in aid of said road have been assigned to said bank or to said Ives, its president, the former amounting to $75,000, the latter to $50,000. The payment of both of which amounts, however, is being resisted by said municipality and county, such assignment being by way of collateral

along with $525,000 of said first-mortgage bonds and 8,454 shares of said capital stock.

Compl'ts T. Mellon & Sons show that on Oct. 29, 1891, there was contracted to be delivered to them by said Allison, Shafer & Co. 51% of the whole capital stock of said company, and that said firm had thereafter delivered to said compl'ts $510,000 of said capital stock as representing 51% of the authorized issue, such delivery being made prior to any delivery to the def'ts The Western National Bank & Brayton Ives on Jan'y 20, 1892, so that compl'ts charge that all stock outstanding other than the $510,000 held by said Mellon & Sons, as fully charged in their other bill in this court, and $490,000 of other stock—by whom held the compl'ts cannot say—is a fraudulent and unauthorized issue. Said fraudulent overissue of stock was voted at the last stockholders' meeting and was used in electing Brayton Ives and Allison, Shafer & Company directors; but in justice to said Ives compl'ts declare that they believe he was ignorant of any knowledge of the character of said stock or the existence of said overissue, but the fact remains that it was so voted, and that by reason of its existence the said Allison, Shafer & Co. are retained in the directory of said road and have voice in the management of its affairs, and that it is now in the possession and control of persons owning said spurious stock, to the exclusion of the rightful holders of a majority of the lawful issue. All of the chief officers and directors of the said company are non-residents
77 of this State and no notice can now be given them of the applications herein made for immediate relief. On the 25th inst. the said Western National bank and Brayton Ives caused the whole of the securities above set out as having been assigned and hypothecated to them, viz., $525,000 of first-mortgage bonds, $845,400 of said capital stock, $25,000 of Hamblen county bonds, and the assigned subscriptions of Grainger county and the town of Morristown for $75,000 and $50,000 respectively, to be offered for sale at public auction, and the lot was knocked down at $16,000, notwithstanding that said Hamblen county bonds are worth par.

Compl'ts charge that in view of the many divers and conflicting liens upon said road and the insolvency of said corporation that it has become necessary to proceed with the administration of its affairs in a court of equity with the purpose of marshalling liens, assets, and liabilities, and that to this end a receiver is necessary for the preservation of the property pending the litigation, and that a general restraining order should be made inhibiting the bringing of any additional suits against the said company, and requiring all persons upon the recovery of judgments in suits now pending to intervene in this cause for an allowance and classification of their claims, and the award of such payment thereon as the class of the claim presented shall warrant and the proceeds of sale will justify.

Compl'ts therefore file this bill in their own behalf and in behalf of all other persons, creditors of said Morristown & C. G. R. R. Co., who may come forward and make themselves parties to the proceeding as provided by law.

And they pray that this bill may be filed as a general creditors' bill, and—

1.

That process issue against all the persons named in the
78 caption thereof as def'ts hereto who are residents, and that publication be made as against those who are non-residents, and that they all be required to answer this bill fully and truly, though not on oath, their oaths being expressly waived.

2.

That a temporary restraining order be issued inhibiting all persons who have not already brought suits against said corporation from doing so, except in this cause in this court, and that all persons, creditors of said corporation, who have already instituted suit be restrained from prosecuting same further than to judgment, and that they be required to intervene herein with their several demands for allowance and payment.

3.

That a temporary receiver be appointed to take immediate possession of said railway, its rolling stock, and property of every character, to hold and operate same under the orders of the court.

4.

That upon proper notice and hearing said temporary restraining order and said temporary receivership be so enlarged as to make them permanent.

5.

That on the hearing all the liabilities of said corporation be ascertained and the rights and priorities of creditors and the order of their rights of liquidation be established, and that said railroad and its property and corporate franchises be sold in satisfaction thereof.

Compl'ts pray for all such other further and different relief as they may be entitled to in equity and for general relief.

79 This is the first application for an injunction and receiver in this case.

JOHN K. SHIELDS,
TULLY R. CORNICK, *Solicitors.*

STATE OF TENNESSEE, }
Knox County. }

Tully R. Cornick makes oath and says that he is the agent and attorney for the compl'ts for the prosecution of this suit, and has read the foregoing bill and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on information and belief of the compl'ts, and as to such matters he believes them to be true.

TULLY R. CORNICK.

Sworn to and subscribed before me Oct. 28, 1892.

[SEAL.] C. N. BROWN, *N. P.*

EXHIBIT "A" TO FOREGOING BILL.

To the president and directors of the Morristown & Cumberland Gap R. R. Company:

We submit to you the following proposition for the construction of your road from Morristown to a connection with the Knoxville, Cumberland Gap & Louisville R. R. at or near Cedar Ford or to a point to be determined by competent engineer and by a careful survey. The road is to be standard *guage* (4x8½), laid with No. 60 steel rails throughout, with all necessary sidings, bridges, trestles, culverts; to be standard specification and built in a workmanlike manner; ties to be first-class and of good native timber, laid 2,600 per mile.

80 The graduation to be regular Southern specification (railroad carefully completed under instructions from the chief engineer).

Tracklaying and surfacing are to be done in a workmanlike manner, also under instructions of the chief engineer.

The equipment of the road shall consist of such freight and passenger locomotives, freight, passenger, and flat cars, also track equipments for each section as may be determined requisite by the chief engineer for the satisfactory operation of said road.

We also agree to commence active construction within one hundred and twenty days (120) from this date at such point or points as the chief engineer may determine and vigorously prosecute construction to completion on or before the (1st) first day of March, 1891.

All of which we hereby agree to perform for the following considerations: Eight hundred thousand dollars ($800,000) of the total issue of the capital stock of the company, the entire amount of the first issue of the first-mortgage six (6) per cent. bonds of the road, and two hundred thousand dollars' ($200,000.00) worth of the preferred stock of the said company (for the equipment of the road), and all town and county subscriptions to said road, or amount of same, to be delivered to us when last rail is laid, making connection with the Morristown and K., C. G. & L. railway.

Said first-mortgage bonds and stocks to be delivered to us proportionately on the first day of each month from the commencement of work on said railroad, we agreeing to complete the same on or before March 1st, 1891.

(Signed) ALLISON, SHAFER & CO.

Resolved, that the within proposition be, and the same is hereby, accepted, and the said proposition, with this endorsement,

81 shall be the contract between the said The Morristown & Cumberland Gap Railroad Company and the firm of Allison, Shafer & Co.

(Signed) J. G. MARTIN, *President.*

Attest: F. H. ALLISON. [SEAL.]

Fiat.

STATE OF TENNESSEE:

To the clerk & master of the chancery court at Morristown:

Upon the presentation of the foregoing bill and on consideration of its averments it is ordered:

1.

That the temporary restraining order prayed for be granted, upon compl'ts executing bond to be approved by the clerk, conditional, as in ordinary injunction cases, in the penalty of ten thousand dollars ($10,000.00.)

2.

That the prayer for a temporary receiver of the Morristown & Cumberland Gap R. R. Company be granted, and James T. Shields, jr., is hereby appointed such temporary receiver, and he shall, before entering upon the discharge of his duties, file with the clerk & master a good and sufficient bond, to be approved by the master, in the penalty of twenty thousand dollars ($20,000.00).

3.

Immediately after his qualification said receiver is directed to take possession of said railroad and all other property be-
82 longing thereto or in possession of said company by lease or otherwise, and shall accurately inventory same and file a copy of said inventory with the master. Said receiver is directed to operate said road and to take charge of its tolls and incomes and to continue and preserve the same in like condition, as at present, if practicable; and to that end he is directed to employ or continue the employment, as justice may demand, all necessary agents and employees whose services are essential to the continued operation of the road or the preservation of its property; and to that end he is authorized to contract, in his official capacity as receiver, for the payment of such reasonable sums as may be necessary to defray the expenses of such services.

4.

It is further ordered that a copy of this order be served upon the def'd't The M. & C. G. R. R. Company, along with other process, and that said company be and appear before the Hon. John P. Smith, presiding chancellor of said division, on the 2nd Thursday, being the 10th day, of November, 1892, at 10 o'clock a. m., at chambers, at the court-house, in Rutledge, Tenn., and then and there show any reason which may be made to appear to the court why a permanent receiver shall not be appointed of said railroad company in this cause and why the temporary restraining order granted herein shall not be made permanent.

5.

In the event that it shall become necessary to issue a writ of possession to put said receiver in the quiet and peaceable possession of all of the property of said corporation, it is ordered that the master issue writs of possession, directed to the sheriffs of Hamblen, Grainger, and Knox counties, for that purpose, commanding said sheriffs to place said receiver in the possession of that portion of said company's property which may be in their several counties.

83 Given under my hand this Oct. 28, 1892.

JOS. W. SNEED, *Judge.*

I, John Murphy, clerk & master of the chancery court, at Morristown, for Hamblen county, Tennessee, do certify that the foregoing is a full, true, and perfect copy of the original and S. bills of Thos. B. Crosby and others *vs.* The Morristown & Cumberland Gap Railroad Co. and others, remaining in my office, together with endorsements thereon, including the fiat of J. W. Sneed, judge, etc.

Witness my hand and seal of office, done at office in Morristown, Tenn., Nov. 7, 1892.

JOHN MURPHY,
Clerk & Master.

(Endorsed:) O. and S. bill. Thos. B. Crosby and others *vs.* The Morristown & Cumberland Gap R. R. Co. *et al.* Filed Oct. 28, 1892, at 6 o'clock p. m. John Murphy, C. & M., by C. K. Murphy, D. C. & M. A true copy. John Murphy, C. & M. Shields & Cornick, sol's.

In the Chancery Court of Hamblen County, Tennessee.

THOS. B. CROSBY *et al.*
vs.
THE MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*

To the Morristown & Cumberland Gap Railroad Company:

Take notice that on Saturday, January 7, 1893, at 2 o'clock p. m., we will move the Hon. Jno. P. Smith, chancellor, at chambers, at Jonesboro', Tennessee, to appoint a permanent receiver of the Morristown and Cumberland Gap Railroad Company in the above-entitled cause.

84 This January 2, 1893.

JOHN K. SHIELDS,
TULLY R. CORNICK,
Solicitors for Compl'ts.

(Endorsed:) Served a true copy of the within notice on the Morristown & Cumberland Gap Railroad Company by leaving the same with the secretary and treasurer, C. R. Johnson, the president not being in Hamblen county. Done this Jan'y 2, 1893. S. E. Kelly, D. sheriff.

In the Chancery Court of Hamblen County, Tennessee.

THOS. B. CROSBY *et al.*
vs.
THE MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*

Be it remembered that this cause came on for hearing on this January 7, 1893, before the Hon. John P. Smith, chancellor, at 2 o'clock p. m., at chambers, at Jonesboro', upon the motion of the compl'ts for the appointment of a permanent receiver of the defendant The Morristown and Cumberland Gap Railroad Company and notice thereof.

And it appearing to the court that on Oct. 28, 1892, under the order and fiat of Hon. Jos. W. Sneed, one of the judges of this State, James T. Shields, Jr., was appointed, at the suit of complainants in this cause, temporary receiver of Morristown & Cumberland Gap Railroad Company and all the property of said company or in its
85 possession, by leave or otherwise, and that said receiver so appointed proceeded forthwith to qualify and took possession of the property of said corporation and everything of which it had possession; and it further appearing to the court by an order made thereafter in the United States circuit court at Knoxville for the northern division of the eastern district of Tennessee, in the cause of John Coleman *vs.* Morristown & Cumberland Gap Railroad Company *et al.*, W. S. Whitney was appointed receiver of said railway company, and that under orders made by said court in said cause the property of the said railway company was taken from the possession of the receiver of this court and placed in the possession of the receiver of that court, and the court, being of the opinion that to appoint a permanent receiver in advance of a determination of the question of superior jurisdiction would be unseemly and not in conformity with that spirit of comity which exists between the State and Federal courts of concurrent jurisdiction, doth order that said motion for a permanent receiver be entered and continued, with leave to call the same up upon notice at any time after said question of jurisdiction is settled.

It is further ordered that James T. Shields, Jr., the temporary receiver of said corporation and its property under the order of appointment in this case, intervene in said cause of John Coleman *vs.* The Morristown & Cumberland Gap Railroad Company *et al.* and there test and contest the question of jurisdiction in such manner and form as he may be advised by counsel, and on application of said James T. Shields, Jr., John K. Shields and Tully R. Cornick are appointed his counsel for that purpose.

Done at chambers, at Jonesboro', this January 7th, 1893.

JOHN P. SMITH,
Chancellor 1st Div., Tenn.

I, John Murphy, clerk & master of the chancery court at
86 Morristown for Hamblen county, Tennessee, certify that the foregoing is a full, true, and perfect transcript of the notice and endorsement thereon and order of the honorable chancellor

made in pursuance of said notice and done at chambers, at Jonesboro', Tenn., and which remains of record in my office in Rule Docket No. 4.

Done at my office, in Morristown, Tennessee, January 9th, 1893.

[SEAL.] JOHN MURPHY,
Clerk & Master.

(Endorsed:) Thos. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Company *et al.* Certified copy of notice of application for permanent receiver and order made at chambers thereon. Rec'd from P. O. and opened and recorded same in Rule Docket No. 4 Jan'y 9, 1893. Jno. Murphy, C. & M.

EXHIBIT No. 4.

THOS. B. CROSBY *et al.*
vs.
THE MORRISTOWN & CUMBERLAND GAP RAILROAD CO. and Others.
} Judgment *Pro Confesso* Entered at the January Rules, 1893.

It appearing to the master in this cause that the defendants The Morristown & Cumberland Gap Railroad Company, T. B. Craig, F. J. Moser, William Kimbrough, John H. Bruce, D. M. Butt, W. G. Lacy, and William McFarland are regularly before the court by original summons issued to the sheriff of Hamblen county, Tenn., Oct. 28, 1892, returnable to November rules of this court and executed by said sheriff, as shown by his return, Nov. 1, 1892; and it also appearing to the master that the defendants D. E. Shields, H. W. Shields, and J. B. Shields and W. D. Gammon are regularly in court by summons issued Oct. 28, 1892, returnable to Dec'r
87 rules, and that the same was duly acknowledged by them Oct. 29, 1892;

And it further appearing that the defendants C. J. Allison, F. H. Allison, and J. J. Shafer, composing the firm of Allison, Shafer & Company; Brayton Ives, The Western National Bank, The Atlantic Trust Company, The Coal & Iron Bank, John Coleman, J. F. Harper, Thos. H. McKoy, The J. I. Case Threshing Machine Company, The Youngstown Bridge Company, and H. E. Smith are regularly before the court, by publication duly made in the Morristown Gazette for four consecutive weeks, requiring them to appear at December rules of this court, and each and all of the aforesaid defendants being required by said summons and publication, respectively, to appear before our said court at the time hereinbefore stated and make defense to complainants' bill filed against them and others in this court, and it appearing to the master that they and each of them has wholly failed to appear and make defense to complainants' bill within the time allowed by law, on motion of complainants' solicitor it is ordered by the master that judgment *pro confesso* be, and the same is here, regularly taken and entered against the said defendants, T. B. Craig, The Morristown & Cumberland Gap Railroad Company, F. J. Moser, Wm. Kimbrough, John H. Bruce, William

M. Butt, W. G. Lacey, Wm. McFarland, D. E. Shields, H. W. Shields, J. B. Shields, W. D. Gammon, C. J. Allison, F. H. Allison, and J. J. Shafer, composing the firm of Allison, Shafer & Co.; Brayton Ives, The Western National Bank, The Atlantic Trust Company, The Coal & Iron Bank, John Coleman, J. F. Harper, Thos. H. McCoy, The J. I. Case Threshing Machine Company, The Youngstown Bridge Company, and H. E. Smith, for want of answer or other defense to complainants' bill, and the cause as to them is set for hearing *ex parte*. Done at the master's office at Jan'y rules, it being the 2d day of Jan'y, 1893.

JOHN MURPHY,
Clerk & Master.

88 I, John Murphy, clerk & master of the chancery court at Morristown, Tenn., for Hamblen county, certify that the foregoing is a full, true, and perfect transcript of the judgment *pro confesso* taken and entered by the master at January rules of said court, it being the 2nd day of January, 1893, on motion of compl'ts' solicitor in the cause of Thos. B. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Co. *et al.*

Done at my office Jan'y 2d, 1893.

JOHN MURPHY,
Clerk & Master.

(Endorsed:) Thos. B. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Co. *et al.* Judgment *pro confesso* taken at Jan'y rules, 1893. A true copy. John Murphy, C. & M.

89 And afterwards, to wit, on the 23rd day of January, A. D. 1893, the answer of the Morristown & Cumberland Gap Railroad Company was filed in the clerk's office of said court; which said answer is clothed in the words and figures following, to wit:

Answer of the Morristown and Cumberland Gap Railroad Company.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY.

The Morristown & Cumberland Gap Railroad Company for answer to the amended and supplemental bill of complaint denies that by the legal effect and construction of the contract between Allison, Shafer & Company and the railroad company the said Allison, Shafer & Company became the general agents of the railroad company for the construction of said road, and denies that all or any of the contracts made by Allison, Shafer & Company with the complainants or others for work, labor, or material or supplies upon said railroad were the contracts of the railroad company.

Defendant denies that the construction contract or the operation thereunder or the execution of the mortgage or the issuance of the bonds or that any of them or that all of them together was merely a plan or device of Allison, Shafer & Company for the purpose of

escaping the usual obligations, duties, or liabilities imposed upon the railroad company or them by law for the purpose of avoiding the liens or rights conferred by law upon the complainants or others furnishing labor or for the purpose of defeating or avoiding said contracts or others furnishing material or labor in the construction of said railroad.

Defendant denies that such construction contract was a scheme, plan, or device for the evasion of legal obligation and lia-
90 bility of the railroad company, or that it is a fraud of the common rights as well as the rights of complainants or other creditors, and denies that it is contrary to public policy and therefore void as to the demands of the complainants or others.

Defendant says that the bonds issued and now outstanding under said mortgage and deed of trust are in the hands of innocent purchasers and *bona fide* holders, and it denies that the said bonds or any of them are held by Allison, Shafer & Company or any of them, but admits that some of the said bonds are held by creditors of Allison, Shafer & Company, and others of said bonds have been sold and are held in fee and by absolute right by others.

Defendant denies that said creditors or purchasers had any knowledge in law or in fact that there is anything unlawful about the issue or sale of said bonds, and denies that there was anything unlawful about either the sale or issue of said bonds.

Wherefore defendant prays as heretofore.

HELM & BRUCE,
Counsel for Morristown & Cumberland Gap Railroad Company.

91 And afterwards, to wit, on the 24th day of Jan'y, 1893, a motion was entered upon the journal of said court to vacate order appointing temporary receiver, &c.; which said motion is clothed in the words and figures following, to wit:

Motion to Vacate Order Appointing Temporary Receiver, &c.

Be it remembered that at a circuit court of the United States began and held for the northern division of the eastern district of Tennessee, at the court-house, in the city of Knoxville, within said district and the sixth circuit, on the 2nd Monday, it being the 9th day, of January, A. D. 1893—present and presiding, the Honorable D. M. Key, judge, &c.—the following proceedings were had, to wit:

TUESDAY MORNING, *January* 24, 1893.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge, &c.

JOHN COLEMAN
vs.
THE MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*

In this cause James T. Shields, Jr., by his solicitors, John K. Shields and Tully R. Cornick, appeared in open court, having filed

his petition to become a party to this cause, and thereupon moved the court to vacate the orders made in this cause appointing a temporary receiver of the defendant The Morristown & Cumberland Gap Railroad Company and assuming jurisdiction of the affairs of the defendant corporation The Morristown & Cumberland Gap Railroad Company as an insolvent corporation, and as grounds for
92 said motion assigns as follows:

I.

The circuit courts of the United States sitting in equity have no jurisdiction to entertain a creditors' bill until after the demand of the complainant shall have been reduced to judgment, nor when the compl't is not a creditor of the def't corporation and the same is only before the court as garnishee.

II.

When the defendant The Morristown & Cumberland Gap Railroad Company gave bond to pay such judgment as the complainant Coleman might recover, this suit became by operation of law a suit for and on behalf of the complainant Coleman in his personal capacity and could not thereafter be continued as a general creditors' bill.

III.

The bill as filed did not seek a restraining order and none was ever granted inhibiting the bringing of independent suits against said corporation by its other and numerous creditors.

IV.

The bill as filed does not bring before the court the requisite and necessary parties whose presence must be had as a condition precedent to the granting of complete relief and the making of such decrees as will confer upon the purchaser of said railroad, under the decree of sale which is sought to be recovered, a full and clear title to said property—that is to say, a mortgage to secure $1,000,000 of bonds executed to the Atlantic Trust Company of New York was resting upon said property, no mention whereof was made in the original bill.

93 V.

After a decree had been entered in this cause vacating the order of June 6th, 1892, appointing a receiver of said corporation on, to wit, Oct. 28th, 1892, in a cause pending in the chancery court of Hamblen county, Tennessee, entitled Thos. B. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Company *et al.*, to which said cause all necessary parties are made parties and which was filed for other purposes than those included in this case, the said railroad and all the property and effects belonging thereto being then in the actual possession of said railroad company, its officers and agents, were by decree and order of said chancery court, pronounced and passed in the above-named case, placed in the custody

and control of James T. Shields, Jr., the mover of this motion, as receiver and officer of said court in said cause.

Wherefore it is respectfully insisted that said chancery court of Hamblen county then acquired and yet retains the absolute and exclusive jurisdiction of the affairs of said railroad and of said corporation, the Morristown & Cumberland Gap Railroad Company, and has the exclusive right to appoint a receiver of the property of said corporation, and said James T. Shields, Jr., now moves the court to vacate the order made in this cause on Nov. —, 1892, appointing W. S. Whitney receiver of said railroad and said Morristown & Cumberland Gap Railroad Company and to and for an order restoring said railroad and its property to the possession of said James T. Shields, Jr., as such receiver, etc.

94 And afterwards, to wit, on the 30th day of January, A. D. 1893, an entry was made upon the journal of said court, Book "M," p. 274; which said entry is clothed in the words and figures following, to wit:

MONDAY MORNING, *January* 30, 1894.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*

In this cause, came on for hearing before the Hon. D. M. Key, judge, the motion of James T. Shields, Jr., to vacate the orders made in this cause appointing a temporary receiver of the Morristown & Cumberland Gap Railroad Company and assuming jurisdiction of the affairs of the defendant company, The Morristown & Cumberland Gap Railroad Company, as an insolvent corporation, and the same was argued by counsel, and thereupon, on consideration, it was ordered by the court that said motion be overruled and that the administration of the affairs of said company proceed in this cause as hereinbefore ordered.

To which decision and order of the court said James T. Shields, Jr., by his counsel, excepts in law.

95 And afterwards, to wit, on the 2nd day of February, A. D. 1893, an entry was made upon the journal of said court; which said entry is clothed in the words and figures following, to wit:

Journal "M," page 287.

THURSDAY MORNING, *February* 2, 1893.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.* } No. 942.

In this cause, on motion of complainants and it appearing that the temporary receiver, W. S. Whitney, has tendered his resignation, and counsel for the various parties in interest being heard, it is ordered by the court that T. J. Smith be appointed permanent receiver of all the property, real and personal, of the Morristown & Cumberland Gap Railroad Co. in this district and under the jurisdiction of this court, and upon his giving a receiver's bond, with two good and sufficient sureties, in the penal sum of $10,000.00, to be approved by the clerk of this court, he will on the 8th inst. enter upon the discharge of his duties as such receiver.

And the temporary receiver, W. S. Whitney, will deliver into the custody and control of said T. J. Smith, permanent receiver, all the property, real and personal, of whatsoever kind or character in his possession as such receiver of said railroad Co., including all books of account, monies on hand and on deposit, and all other kinds of property whatsoever pertaining to said receivership, and he will make a full inventory of the same and file it with his final
96 report as temporary receiver, and will take from said T. J. Smith his receipt therefor, which he will also append to his said report.

And said Smith, as permanent receiver, will operate and manage said railroad property under the general direction of this court with a view to the preservation of said property and the prosperity of its operation for the benefit of said company and the creditors thereof, and he will receive all rents, tolls, incomes, and such other profits of whatsoever kind accruing from said property, and will apply the same so far as necessary to the current expenses of said road. Whatever residue may remain after paying said current expenses he will hold subject to the order of this court.

And said Smith will keep all proper and necessary books of account for the purpose of showing the receipts and disbursements and other business of said railroad, and will deposit the monies of said railroad in his hands in some solvent and reliable banking-house, and for the disbursement of said fund for any other purpose than the payment of current expenses he will make application by petition to this court or the judge thereof at chambers.

And said receiver will make quarterly reports of the affairs of his receivership, the first one to be filed on 1st of April next.

97 And afterwards, to wit, on the 22d day of March, A. D. 1892, a foreclosure bill was filed by the Atlantic Trust Company in the clerk's office of said court; which said for-closure bill is clothed in the words and figures following, to wit:

Foreclosure Bill.

To the judges of the circuit court of the United States for the eastern district of Tennessee, sitting in equity:

The Atlantic Trust Company of New York, a corporation created and existing under the laws of the State of New York and having its principal office and place of transacting business in the city of New York, in said State of New York, and a resident and citizen of said State of New York, brings this its bill of complaint against the Morristown & Cumberland Gap Railroad Company, a corporation created and existing under the laws of the State of Tennessee having its office in the town of Morristown, in said State of Tennessee, and being a resident and citizen of the State of Tennessee and a resident and inhabitant of the eastern district of Tennessee; and thereupon your orator complains and says:

First. Your orator is a corporation created, organized, and existing by and under the laws of the State of New York, and at all times hereinafter mentioned it was and still is authorized and empowered to take and hold in trust the property conveyed to it in trust as hereinafter stated and to perform and execute the trust imposed on it by virtue of the mortgage or deed of trust hereinafter described.

Second. The defendant, The Morristown & Cumberland
98 Gap Railroad Co. (hereinafter styled "the railroad company," for brevity's sake), was at all times hereinafter mentioned and now is a corporation created, organized, and existing by and under the laws of the State of Tennessee, having been chartered on the — day of ——, 1889, and is now the owner of a certain line of railroad situated in the counties of Hamblen, Grainger, and Knox, in the State of Tennessee.

Third. Heretofore, to wit, on or about the ninth day of April, 1891, said railroad Co., in pursuance of power and authority by it in that behalf possessed, and due corporate action having been had for its lawful corporate purposes, resolved and determined to issue its corporate bonds to be known as first-mortgage bonds in denominations of $1,000 each, amounting in the aggregate to $1,000,000, such bonds to be numbered from one consecutively upwards and to bear interest at the rate of six per centum per annum from July 1st, 1891, payable in semi-annual installments on the first days of January and July in each year, beginning on the first day of July, 1891, at the office of the Atlantic Trust Co. in the city of New York, and to secure the same by a mortgage on its entire line of railroad and all of its rights, property, franchises, lands, buildings, and premises, together with all rolling stock and all appurtenances thereunto belonging, and all its property of whatsoever description and wheresoever situated then held or which might hereafter be acquired.

Said railroad thereafter duly made and executed such bonds to the amount of $1,000,000 of principal, par value, and by each of said bonds, for value received, promises to pay to bearer on the first

day of January, 1921, the sum of $1,000 in gold coin of the United States of America, of the standard weight existing at the date of said bond, at the office of your orator, The Atlantic Trust Co., in the city of New York, with interest thereon in like gold
99 coin at the rate of six per centum per annum, on the surrender of the coupons annexed to such bond representing such interest.

Your orator further shows that said bonds to the amount of $1,000,000 of principal, par value, were thereafter duly certified by your orator as trustee under the mortgage or deed of trust hereinafter mentioned and were delivered by it, in accordance with the terms of said mortgage, to said railroad company, and your orator is informed and believes that all of said bonds to the amount of $1,000,000 of principal, par value, have been duly negotiated and sold or caused to be negotiated and sold by said railroad Co., and that all of said bonds to the amount of $1,000,000 of principal, par value, together with the interest warrants or coupons attached thereto, are valid obligations of said railroad Co. and have come into the hands of numerous persons whose names are unknown to your orator.

Fourth. In order to secure the payment of the principal and interest of said bonds according to the terms thereof without preference or priority by reason of the time of issue and equally and ratably, said railroad Co., defendant herein, in the due exercise of the power and authority by it in that behalf possessed and pursuant to due corporate action of the company to that end, did, on or about the — day of ——, 18—, make, execute, and deliver to your orator and did seal with its corporate seal its certain mortgage or deed of trust being dated January 1st, 1891, and thereby granted, bargained, sold, assigned, transferred, and conveyed unto your orators and its successor or successors in the trust thereby created and its and their assigns forever the property, rights, and franchises which are more particularly described as follows:

All and singular its entire main line of railway, now constructed or hereafter to be constructed, from the city of Morristown, in
100 the State of Tennessee, through the counties of Hamblen, Knox, and Grainger, to a point on the line of the Knoxville, Cumberland Gap & Louisville railroad near to the station at Corryton, a distance of forty miles or thereabouts, with all future branches thereof and the tracks of said railroad or roadway and the superstructure and the rails laid and to be laid thereon and all the appurtenances thereof, and all the sidings, turnouts, bridges, viaducts, culverts, ways and rights of way and lands and premises whatsoever, with the improvements thereon, and all structures, bridges, fences, walls, and fixtures belonging to and all lands and real estate provided or designed to be used now or hereafter for depots, and all the buildings and repair shops, car-houses, engine-houses, and other buildings and structures whatsoever belonging or appertaining to or used or which may be hereafter used for or in connection with said railroad, and also all the rolling stock of said railroad and all locomotives, passenger cars, freight cars, and all other cars, car-

riages, tools and machinery, fuel, rails, and materials and things of whatsoever kind, whether for or in connection with the road itself or its rolling stock or capital or its work in machine shops, or its work of any kind, now belonging, appertaining to, or used by or designed for the purposes of said railroad, for the use, maintenance, or operation thereof, and also all the lands and real estate situated in the State of Tennessee, with the appurtenances thereof, which the said party of the first part may hereafter acquire for the purposes of or in connection with its above-mentioned line of railroad or any straightening or alteration of the line of the same, or for the purposes of or designed for depot grounds or stations for sites for shops, car-houses, or buildings or improvements of any kind whatsoever used or intended to be used for the purposes of said railroad, and all and singular the rights, franchises, easements, rights, privileges, interest, and immunities, income, rents, rolls, profits, benefits,
101 and advantages belonging or appertaining to or connected with said railroad Co. or to arise or accrue from said railroad and branches, together with all and singular the tenements, hereditaments, appurtenances, and premises aforesaid, or any of them or any thereof, and the reversion and reversions, remainder and remainders, rents, issues, and profits thereof, and all the estate, right, title, and interest and property, possession, claim, and demand whatsoever, at law or in equity, of the said party of the first part of and to the same and every part and parcel thereof.

To have and to hold the above-described premises, property, rights, franchises, and appurtenances unto the said party of the second part, its successors and assigns forever; in trust, nevertheless, for the equal *pro rata* use, benefit, and security of all persons or corporations who shall be or become the owners or lawful holders of any of the said bonds issued hereunder without any preference or priority of one bond over another of or by reason of priority in time of the issue or negotiation thereof or otherwise for the use and purposes herein declared and upon the trusts herein set forth; and for a further and more particular description of said mortgage, as well as the conditions, provisions, recitals, stipulations therein contained, your orator refers to a true copy of said mortgage or deed of trust, which is hereto annexed, marked Exhibit "A," and which your orator prays may be taken as a part of this bill as fully as if incorporated into the body of it, and your orator also prays leave to produce and refer to the original of said mortgage or deed of trust upon the hearing of this cause.

Fifth. Your orator duly accepted the trust created in and by said mortgage or deed in trust, and thereupon the same was duly registered in the office of the register of Grainger county, Tennessee, on April 20th, 1891, in the office of the register of Hamblen county on the 20th day of April, 1891, and in the office of the register
102 of Knox county, Tennessee, on April 20th, 1891, and was also filed and recorded in all other places wherein said mortgage was or is required by law to be recorded or filed.

Sixth. On the first day of January, 1892, the holders of said mortgage bonds hereinbefore set forth, then outstanding to the

amount of $1,000,000, issued and negotiated as aforesaid and secured by said mortgage or deed in trust, and of the coupons of interest annexed to said bonds were entitled to collect and receive from the defendant railroad company the interest falling due on said first day of January, 1892, being semi-annual interest on each of said bonds. Your orator is informed and believes that demand was duly made on or about the said first day of January, 1892, by the holders and owners of a large number of said bonds for payment of interest falling due thereon on said last-mentioned day, and that coupons for interest due on that day *was* duly presented and payment thereof demanded in the manner provided and prescribed by the terms of said bonds, coupons, and mortgage, such demand of payment of said coupons being accompanied by an offer to surrender the same, but said defendant railroad company made default in the payment of coupons for interest falling due on said first day of January, 1892, according to the tenor and effect of such bonds and coupons, and said semi-annual installments of interest and said interest coupons have not been paid to the owners and holders of said bonds or coupons or otherwise, and said semi-annual installment of interest and said coupons remain wholly due and owing and unpaid, and the said defendant railroad company also made default in like manner in the payment of the coupons for interest on said mortgage bonds falling due on the first day of July, 1892, and the first day of January, 1893; thereby default was made in the performance by
103 the defendant railroad Co. of the terms and conditions of said bonds and said mortgage and conditions thereof became and were broken.

Seventh. Your orator further shows that the amount of interest upon said bonds secured by said mortgage which is in default and which is due and owing from the defendant railroad Co. to the owners and holders of said bonds and coupons is the sum of $90,000, with interest at six per cent. per annum on $30,000 thereof from January 1st, 1892, and with interest at six per cent. per annum on $30,000 thereof from July 1st, 1892, and with interest at six per cent. per annum on $30,000 thereof from January 1st, 1893.

Eighth. Your orator would further show unto your honors that in and by the terms of the said mortgage of deed in trust so executed to secure the payment of said bonds, principal and interest, it is provided that if default shall be made in the payment of the principal or interest moneys mentioned in said bonds or coupons or any or either of them or any part thereof according to the tenor and effect of said bonds or coupons or either of them as in the said mortgage or trust deed provided your orator, The Atlantic Trust Co., might, and upon being requested by the holders of one-third of the said bonds then outstanding in respect of which or of the coupons upon which said default might have been made and upon being properly indemnified for such costs and expenses as might be incurred in acting in pursuance of such request should, proceed by suit at law or in equity, as your orator might be advised by counsel, to enforce payment of such bonds or to foreclose said mortgage and to sell the railroad, lands, franchises, appurtenances, and

property of whatsoever kind or description, wheresoever situated, conveyed by or subject to the provisions of said mortgage after the judgment of a court of competent jurisdiction, but it was ex-
104 pressly stipulated in said mortgage that the same should not be enforced or enforceable until three months after there should have been a failure to pay principal or interest of said bonds or coupons. It was further provided in said mortgage that in case default should be made in the payment of interest upon said bonds or any of them, and that such default should continue for the period of three months, then the principal of said bonds should, at the option of your orator, the trustee, immediately become due and payable.

Your orator shows unto your honors that in and by the terms of said mortgage it is further provided that should the trustee (your orator) proceed by suit or suits in equity or at law the said trustee should be entitled to have the premises, estate, franchises, rights, privileges, and property granted and conveyed or intended so to be by said mortgage sold by judicial sale under the order of a court of competent jurisdiction for or towards the satisfaction of the principal and interest due or owing upon the then outstanding bonds issued or entitled to the benefit of the security of said mortgage and for the enforcement of the rights, liens, and securities of the trustees and the bondholders, and should be entitled pending any such suit or proceeding to a receivership of said premises, estates, rights, privileges, and property and of the fares, freights, tolls, earnings, issues, profits, and income thereof.

And in and by the terms of said mortgage or deed in trust it was further provided, declared, and agreed that in case of such sale being made of the said premises, properties, rights, and franchises thereby mortgaged or any part thereof in enforcement of the mortgage lien thereby created the purchaser or purchasers at such sale should be entitled, in making settlement for and payment of the purchase-money bid at such sale, to turn in or use towards the payment of such purchase-money the bonds held by such purchaser or purchasers, to or towards the payment whereof the net pro-
105 ceeds of such sale should be legally applicable, counting such bonds or the amount of the same so turned in or used for such purpose at such sum as should be payable out of the net proceeds of such sale to such purchaser or purchasers, holder or holders, of such bonds for his or their just share or proportion of such net proceeds, due receipts and acknowledgements being thereupon given by the holders of such bonds for the am't thus realized thereon by reason of turning in or using the same as aforesaid, and the said bonds being, if the net proceeds of such sale should be sufficient to extinguish them, delivered up to the person or persons making the sale and entitled to receive payment of the purchase-money, or if such proceeds should only suffice to make a partial payment of such bonds the endorsement being made upon said bonds of the amount so realized on account thereof.

It is further provided in and by the terms of said mortgage or deed in trust that your orator, trustee therein, should be entitled to

reasonable compensation for all services rendered in the execution of said trust.

Ninth. Your orator further shows and avers and charges the facts to be that the said defendant railroad Co. has made default in the payment of interest upon said bonds so secured by said mortgage, as hereinbefore shown, and that such default has continued for the period of three months and longer, and your orator, The Atlantic Trust Co., in the exercise of the option conferred upon it by the terms of said mortgage or deed in trust has heretofore declared and does now declare the entire principal of said bonds immediately due and payable; and your orator further avers and charges that it has been requested by the holders of more than one-third of the said bonds then and now outstanding in respect of which or of the coupons upon which said default has been made to proceed by suit at law or in equity, as your orator may be advised by coun-
106 sel, to enforce payment of said bonds and to foreclose the said mortgage and to sell the railroad's lands, franchises, appurtenances, and property of whatsoever kind or description, wheresoever situated, conveyed by or subject to the provisions of said mortgage or deed in trust upon judgment of a court of competent jurisdiction.

Tenth. Your orator would further show unto your honor that heretofore, to wit, on or about the 26th day of May, 1892, one John Coleman filed his original bill in this honorable court against the Morristown and Cumberland Gap Railroad Co. *et al.*, numbered 942 on the rule docket, alleging, among other things, that as a subcontractor under the principal contractors who constructed the line of said railroad he laid the steel rails upon the road-bed of said railroad and surfaced the track therefor, and that there was justly due him for such work about sixteen or seventeen thousand dollars. He further alleged that he had given the said railroad Co. due notice that he claimed a lien upon its property for his said alleged work and labor, and that he was entitled to a first lien upon said railroad to the extent of his alleged debt under the laws of the State of Tennessee. He further alleged that said railroad Co. was insolvent and that it was indebted to the extent of more than $65,000.00 to other persons for equipments, materials, and rights of way. The said Coleman filed his said bill on behalf of himself and all other creditors of said railroad Co. as a general creditors' bill for the purpose of administering the affairs and assets of said insolvent corporation. He prays for judgment against his principal contractors for the amount of his alleged debt, and asks that the same be declared a lien upon said railroad property and franchises for the enforcement of said lien by the sale of the property. He further prayed that a receiver be appointed for said railroad corporation to take custody and control of all its property and assets, and for general relief.

107 Your orator is informed that this honorable court entertained said bill as a general creditors' bill for the purpose of administering the affairs and assets of said railroad Co., and that your honors appointed a receiver to take charge of all the prop-

erties owned by said railroad Co., and that said receiver is now in possession of the same. Your orator was not made a party to said original bill. Your orator would further show unto your honors that on or about November 28th, 1892, the said John Coleman, together with a number of other persons who had come by petition and made themselves parties to said suit, claiming to be creditors of said railroad Co., filed their amended and supplemental bill in said cause of John Coleman *vs.* The Morristown and Cumberland Gap Railroad Co. *et al.*, in which, after setting forth in substance the contents of the original bill and the various steps that had been taken in that cause up to that date, by way of supplement to said original bill, showed to your honors the fact of the execution to your orator by said railroad Co. of the said mortgage or deed of trust; that your orator had accepted said conveyance and assumed the duties of trustee; that said railroad Co. under said mortgage had issued bonds to the amount of $1,000,000, which bonds were duly certified by your orator; that said bonds, by agreement between said railroad Co. and your orator, had been delivered to Allison, Shafer & Co., the principal contractors with said railroad Co. in the construction of its line of road, in part compensation for the construction of said road; that about the same time said railroad Co. had issued all its stock, to wit, $1,000,000 of capital stock, to said Allison, Shaffer & Co. in pursuance of its construction contract in satisfaction of the balance of compensation due to Allison, Shaffer & Co. in the construction of said railroad; they called upon said railroad Co. and Allison, Shaffer & Co. to produce and file a
108 copy of said construction contract to the amended and supplemental bill, to produce and file in that cause a copy of the said mortgage or deed in trust made to your orator.

Complainants further allege and charge that by the terms and legal effect of said construction contract Allison, Shaffer & Co. became and were not separate contractors in the usual sense of the term, but general agents of said railroad Co. for the construction of said road, and that all contracts made by them with said Coleman and other complainants for work and labor and material and supplies upon said railroad were contracts of said railroad Co. The said John Coleman and other complainants further charge that the said construction contract and operations thereunder and the execution of said mortgage to your orator and the issuance of said bonds under said mortgages were merely a plan or devise of said Allison, Shaffer & Co. and the promoters of said railroad Co. for the purpose of escaping the usual obligations, duties, and liabilities imposed upon said company by law and for avoiding the liens and rights conferred by law upon the said Coleman and others as furnishers and subcontractors under said Allison, Shaffer & Co., the principal contractors; and they further aver that the said construction contract, the mortgage or deed of trust to your orator, and the issuance of said bonds were a fraud upon complainants and the other creditors of said railroad Co.; and they further aver that the bonds issued and now outstanding under said mortgage and deed in trust are not in the hands of innocent persons or *bona fide* holders, but

are held by persons with full knowledge in law and fact of the alleged equities existing in favor of said complainants, and that for this reason the said bondholders and your orators can have no lien prior to the rights of the said complainant.

109 Complainants in said amended bill pray that your orator, The Atlantic Trust Co., and the said Allison, Shaffer & Co. be made defendants to said amended and supplemental bill; that the rights and equities of all parties to said suit and all other creditors who shall thereafter become parties be ascertained and declared by the court in this cause and liens of the various creditors be enforced by a sale of said railroad Co.'s property, and they pray for general relief.

The said cause of John Coleman *vs.* The Morristown and Cumberland Gap Railroad Company *et al.* still remains pending and undetermined in your honors' court.

Wherefore and inasmuch as your orator is remediless, save in a court of equity, your orator prays:

I.

That it may be allowed to file this bill as an original bill in your honors' court against the said Morristown and Cumberland Gap Railroad Co., or, if for any reason this should not be done, then that it may be allowed to file the same in the said cause of John Coleman *vs.* The Morristown and Cumberland Gap Railroad Co. *et al.* as a petition in the nature of a cross-bill against the said Morristown and Cumberland Gap Railroad Co.

II.

That a writ or writs of subpœna be issued, directed to the defendant, The Morristown and Cumberland Gap Railroad Co., and to such other parties as it may seem meet and proper to your honors, commanding it and them at a certain time and under a certain penalty therein to be named, personally to appear before this honorable court and answer all and singular the matters aforesaid, but not under oath, the oaths to its and their answers being hereby expressly waived under the statute.

110 III.

That the amount due, owing, and unpaid for principal and interest upon said mortgage bonds secured by said mortgage or deed in trust to your orator dated January 1st, 1891, may be ascertained and fixed, and that payment thereof by the defendant, the said railroad company, may be decreed by this court; that the lien of said mortgage may be established and decreed a first lien prior and superior to all other claims upon the premises and properties therein described and embraced; that said mortgage or deed in trust may be foreclosed, and that all and singular the premises and property, rights, and franchises covered by or embraced in the said mortgage may be adjudged and decreed to be sold at a judicial sale thereof, according to the course and practice in case of mortgage foreclosures

of such character, and that by such sale and conveyance to be executed thereupon the defendant railroad Co. and all persons claiming or to claim under it subsequent to the recording of said mortgage shall be absolutely and forever barred and foreclosed of and from all right, claim, title, lien, possession, or equity of redemption in or to or in respect of the premises, properties, rights, and franchises so sold and conveyed, and that actual possession of said premises, properties, rights, and franchises so sold and conveyed may be decreed to be delivered to the purchaser, and that such sale may be declared to be in execution and enforcement of the lien created by said mortgage; that from the proceeds of such foreclosure sale your orator may be paid its costs and expenses in this suit and of the execution of its trusts and all payments and counsel fees and other necessary expenses of the property and its reasonable compensation for the performance of the said trust, and that the residue of the proceeds of such foreclosure sale or so much thereof as may be required for the purpose may be paid and applied under the orders and decrees of this court towards the payment of
111 the principal and interest of the said mortgage bonds secured by said mortgage or deed in trust, together with interest on overdue interest down to the time of sale, without preference to either principal or interest; that pending this suit some suitable person may be appointed by this court permanent receiver to take possession of all and singular the said mortgage property with the usual powers of receivers in such cases and with such other powers as to your honors may seem right and proper.

IV.

Your orator prays for all such other, further, different, and general relief as it may be entitled to under the facts in equity and good conscience; and your orator will ever pray, &c.

C. R. McILWAINE,
Solicitor for Complainant.

UNITED STATES OF AMERICA,
Southern District of N. Y., State, City, and County of New York.

Personally appeared before me the undersigned authority, William H. Male, who, being duly sworn, deposes and says that he is the president of The Atlantic Trust Co. of New York, the complainant named in the foregoing bill of complaint, and that said bill and the matters therein stated and contained are true of his own knowledge except as to the matters therein stated to be alleged on information and belief, and as to those matters he believes the same to be true.

(Signed) W. H. MALE.

Sworn to and subscribed before me this the 6th day of February, 1893.

CHARLES F. WELLS,
Notary Public, New York County.

112 This bill may be filed as an original bill upon the execution of the usual bond for costs. The other branches of the application will be heard next Saturday at Knoxville, when the application of Post, Martin and Company is to be heard.

March 15th, 1893.

D. M. KEY, *Judge.*

113 *Order Consolidating Causes. Entered April 21st*, 1893, *Book "M," p.* 346.

FRIDAY MORNING, *April 21st*, 1893.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.* } No. 942. Order.

and

ATLANTIC TRUST COMPANY
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY. } In Equity.

It appearing to the court that the matters involved in these two causes are of such a nature that the said cases cannot be heard separately in such manner as to grant full relief to the different parties, it is ordered by the court that these two causes be, and the same hereby are, consolidated, and that they be heard together.

Enter this.

(Signed) D. M. KEY, *Judge.*

114 *Answer.* (*Filed June 9th*, 1893.) *H. H. Taylor, Clk.*

In the Circuit Court of the United States for Northern Division of Eastern District of Tennessee.

THE ATLANTIC TRUST COMPANY, Compl't,
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY, Def't. } Answer.

The defendant, The Morristown & Cumberland Gap Railroad Company, for answer to the bill of complaint herein admits that it is a corporation and a resident and citizen of Tennessee and was created and organized under and by the laws of said State.

It admits that at the time mentioned in the bill it did, in pursuance of authority possessed and duly exercised by it, resolve to issue its corporate bonds of the character and to the amount alleged

in the bill, and to secure the same by a mortgage of the character therein alleged, and that it did duly issue and execute such bonds and mortgage as alleged in the said bill, and that said bonds were certified by complainant and delivered to the defendant, and that defendant did thereafter negotiate and sell all of said bonds and they are valid obligations of this defendant.

Defendant also admits that it did execute and deliver to complainant the deed of trust referred to and pleaded in said bill for the purposes therein stated, and that it was accepted by complainant and recorded as alleged therein.

It admits further that demand was duly made upon by holders of said bonds for payment of the coupons which were due, respectively, on January 1st, 1892, July 1st, 1892, and July 1st,
115 1893, and that it made default in payment of said coupons and has not paid them nor any of them, said demands having been made at the respective maturities of said coupons, and that defendant's default in payment had continued more than three months before the bill herein was filed.

Defendant prays that the right of all parties in interest be protected as justice may require.

(Signed) HELM & BRUCE,
Solicitors for Def't.

116 United States Circuit Court, Northern Division of Eastern District of Tennessee.

JOHN COLEMAN, Complainant,
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY, etc., Defendants.

To the honorable judges of the circuit court of the United States:

The petitioner, John Coleman, who is the original complainant in this cause, and The Morristown and Cumberland Gap Railroad Company, a defendant herein in the cause of The Atlantic Trust Company *vs.* M. and C. G. R. R. Co., now pending in this court and which has been ordered to be heard with this cause, and T. H. McCoy, L. A. Manley, G. McHenderson, Marion Davis and wife, Nancy; Hilton & Sanders, Mation Maples and wife, Mary; J. H. Renfroe, G. W. Renfroe, T. B. Craig, J. H. Bruce, W. G. Lacy, J. H. Cannady, H. T. Cannady, Leonard Dalton and wife, Amanda; S. B. Luttrell & Co., McTeer, Payne, Hood & Co.; Brown and Stabblefield, T. C. Cain & Co., W. W. Ferrell, administrator, who are intervening petitioners in this cause, do respectfully state and show to the court herein that this suit was instituted on May 26th, 1892, by complainant, John Coleman, on behalf of himself and all other creditors of defendant, The Morristown & Cumberland Gap Railroad Company, who might choose to come into court and have themselves made parties to this proceeding, and in which said complainant claimed a lien on said railroad, its franchises and property, and averred that said railroad company was insolvent and prayed that said lien be en-

forced by a sale of said property, and that the assets of said
117 railroad company be distributed among its creditors according to their rights and priorities, and in the meantime that a receiver be appointed to take charge of all the property of said railroad company and operate the same for the benefit of all the creditors of said company and for other and general relief.

Many months after the institution of this suit and while the same was still pending and undetermined Thomas Mellon, Richard Mellon, and A. W. Mellon, as partners under name of T. Mellon's Sons, did, on October 28th, 1892, institute a suit in equity in the chancery court of Hamblen county, Tennessee, against the said Morristown and Cumberland Gap Railroad Company, defendant herein, and against F. H. Allison, C. J. Allison, and J. J. Shafer, partners as Allison, Shafer & Co., who were also defendants to the original bill herein and are still defendants herein.

In said suit in the Hamblen chancery court the said Mellon's Sons alleged in substance that — railroad company was a corporation, and that said Allison, Shafer & Company had entered into a contract with it to build a railroad for it from Morristown to a junction with the Knoxville, Cumberland Gap and Louisville railroad (which contract was the same as that referred to in the bill and answer herein), but that by reason of various facts specifically alleged in said bill the said Allison, Shafer & Co. lost their identity as independent contractors and became and were the agents and representatives of said railroad corporation in all respects touching the constructions of said road, which corporation said bill charged was therefor- bound as principal upon all contracts made by said Allison, Shafer & Co. for said construction.

Said bill further charged that under the circumstances aforesaid the said Allison, Shafer & Co., being in great need of means
118 with which to pay for rails theretofore furnished by Carnegie & Co. and to purchase additional rails to be thereafter used, were referred by said Carnegie & Co., who were manufacturers, to said Mellon's Sons, as bankers, to secure a loan and line of credit that would enable them to pay for rails and materials theretofore obtained or to be thereafter obtained, and that therefore arrangements were made whereby said Allison, Shafer & Co. were permitted to check upon said Mellon's Sons and did check upon them for $84,000.00, for which they executed their notes to Melon's Sons, secured by mortgage bonds of the said railroad company as collateral security.

And said bill charged that the money thus loaned was used in paying off lien claims against said railroad and paying for material used in its construction, and that therefore said Melon's Sons were entitled to be subrogated to the lien of Carnegie & Co. for rails furnished and that of other material used and contractors paid off with said $84,000.00.

Wherefore said bill prayed for a personal judgment for $84,000.00, with interest from October —, 1891, against both Allison, Shafer & Co. and said railroad company and for a decree declaring said complainants to have a lien to secure said sum on said railroad, its ap-

purtenances and franchises, with a suitable decree for the enforcement of said lien by a sale of said railroad, etc., all of which more fully appears from a copy of said bill afterwards filed herein as *are* exhibited with an intervening petition of said T. Mellon's Sons, which bill or copy thereof is hereby specifically referred to for a full statement of its contents.

Said bill of Mellon's Sons was filed as aforesaid in the Hamblen chancery court on October 28th, 1892. Very shortly thereafter, viz., on November 12th, 1892, this court entered an order in this suit,
reciting that the bill herein was properly filed as a general
119 creditors' bill for winding up the affairs of an insolvent corporation and ordering that it be sustained as such, and that all creditors of said corporation come forward and exhibit their demands and have themselves made parties hereto and show in their petitions the nature and extent of their claims and whether secured by lien or other security, and, if so, the nature thereof, but providing that parties having suits then pending against said railroad company for rights of way or other claims and demands might prosecute the same to judgment and file the judgments herein as evidence of the amount and character of their demands; all of which suits have been prosecuted to final judgment except said suit of T. Mellon's Sons, and from none of which judgments are appeals pending.

Your petitioners further state that subsequently, viz., on March 4th, 1893, said T. Mellon's Sons filed their intervening petition herein, in which they asserted a claim and lien against said railroad company for $5,174.10 debt and $29.05 costs of suit by virtue of an assignment to them by S. T. Shields of a judgment against said company for the sums aforesaid, and in which intervening petition they also set forth the pendency of said suit in the Hamblen chancery court for $84,000.00, and which they stated was at issue and being prepared with all possible expedition, and that they would present the result of the trial thereof to this court by amended and supplemental petition, and with which intervening petition they filed as an exhibit therewith the aforesaid copy of their bill in the Hamblen chancery court.

They prayed for a decree herein allowing the demand represented by said assigned judgment as a lien upon said railroad, etc., and for leave to present by amended petition the final judgment in said Hamblen chancery court and for such orders as would fully protect them, and that their several demands be paid out of the proceeds
of the sale of the said railroad, etc., and for general relief.

120 Thus it is made apparent to the court and it is true that said T. Mellon's Sons are parties to this suit, asking relief at the hands of this court, but as to one item of their claim, which item amounts to $84,000.00, with interest in addition thereto, and to secure which they claim a lien on said railroad, etc., they are insisting that they be allowed to have the same tried and their rights concerning the same determined by another court than this one, viz., the Hamblen chancery court, though many of the material facts and principles of law and equity upon which that claim is

based and resisted and which must necessarily be decided in the determination of said claim are also involved and must necessarily be determined by this court in determining the rights and priorities of the various claimants in this cause, none of whom except T. Mellon's Sons are parties to said suit in the Hamblen chancery court.

And your petitioners further state that it is of great importance and is due to the several parties hereto that this suit should be promptly determined and the said railroad, etc., be promptly sold and its proceeds be distributed among the various parties hereto according to their rights and priorities as they shall be fixed herein; but no sale can be advantageously had until the questions as to the existence, amounts, and priorities of liens shall be determined, for lien claimants would not know how to bid at such sale, nor even in the event of a sale could any distribution be had without such determinations; but your petitioners state that said suit in the Hamblen chancery court has never yet been tried therein and cannot be tried before the latter part of February, this year, and that after it shall be tried therein it will certainly be appealed to the supreme court of Tennessee, whichever way it may be decided in
the chancery court, as both complainants and defendants
121 therein have announced that they will thus appeal in the event of an unfavorable decision to the one or the other in said chancery court.

Your petitioners further state that the next term of the supreme court of Tennessee to which such appeal could be prosecuted will not begin until September, 1894; and your petitioners further state that at the last term of the said supreme court it tried the cases from Hamblen county and other counties in the upper part of east Tennessee, and the docket of the court is such that at its next term, viz., the September term of 1894, it may not be able to try cases appealed from Hamblen county, and, if so, cannot and will not try them before the term beginning September, 1895, as said court has but one term for east Tennessee each year. It will therefore be impossible to have a final determination of said suit in the State courts before the fall of 1894, and it is probable that it cannot be had before the fall of 1895, and in the event of a reversal by the supreme court, with directions for another trial in the chancery court, which may happen, the final determination will be very much further delayed.

Your petitioners further state that to save time and costs they are willing, and they hereby consent, that the pleadings and evidence which have been filed in said cause in said Hamblen chancery court or shall be filed therein before the action of this court upon this petition or copies thereof may be filed herein and considered by the court as the original pleadings and evidence herein bearing upon said claim of T. Mellon's Sons.

Wherefore, in view of the facts heretofore alleged that said T. Mellon & Sons and all others who are parties plaintiff or defendant in said cause in the Hamblen chancery court are also parties to this suit, and that the questions of law and fact involved therein are

to a large extent the same as those involved in other
122 claims pending herein, and that none of the claimants herein (except said Mellon's Sons) are parties to that cause, and that this cause was the first instituted and is a general creditors' suit and a decree in said State court on the mooted question of lien will not be conclusive in this cause, but must be herein relitigated, and that it is essential to the administration of justice that this cause should by promptly determined and a sale be speedily had and the proceeds thereof distributed, and that neither such sale nor distribution can be properly or justly had until the existence or non-existence of the lien claimed by said Mellons and the amount thereof be determined, and that it will probably be eighteen months or two years and possibly longer before such questions can be finally determined in the State courts, and that with the exceptions of that claim this case is now ready for trial, and that the parties hereto consent that the pleadings and evidence filed or to be filed in said chancery court or copies thereof may be filed herein and considered as original pleadings and evidence herein—in view of all these facts and considerations your petitioners pray that the leave given said T. Mellon's Sons to prosecute their suit in the Hamblen chancery court to judgment and to file herein the judgment therein as evidence of the amount and character of their demands be withdrawn by this court, and that said T. Mellon and Sons be required to prosecute in this court alone whatever claims or demands they have against said railroad company, and be enjoined from further prosecuting any such claim in said Hamblen chancery court or any other court than this one.

And petitioners, as in duty bound, will ever pray, etc.

INGERSOLL & PEYTON,
Sol's for Complainants and for Petitioners Named.
HELM & BRUCE,
Sol's for M. & C. G. R. R. Co.
C. R. McILWAINE,
Sol. for Atlantic Trust Co.
WEBB & McCLUNG,
Sol's for J. L. Mott.

123 Henry H. Ingersoll, soliciter for complainants, makes oath that the foregoing petition is true to the best of his knowledge and belief.

HENRY H. INGERSOLL.

Sworn to and subscribed before me 19th of January, 1894.
J. T. CARTER, *Dep. Clk.*

124 *Order Denying the Petition of Complainants. Filed January 19th*, 1894. *Entered Journal "X," Page* 116. *H. H. Taylor, Clerk.*

Be it remembered that at a circuit — of the United States began and held for the northern division of the eastern district of Tennessee, at

the court-house, in the city of Knoxville, within said district and the 6th circuit, on the second Monday, it being the 8th day, of January, A. D. 1894—present and presiding, the Honorable D. M. Key, judge, etc.—the following proceedings were had, to wit:

TUESDAY MORNING, *January 23rd*, 1894.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge, etc.

JOHN COLEMAN
vs.
M. AND C. G. R. R. Co. *et al.*

This cause was heard upon the petition of complainant, filed herein on January 19th, 1894, to speed the cause by restraining the intervening petitioners, T. Mellon & Sons, from the further prosecution of their demand pending in the chancery court at Morristown, Tennessee, against said Morristown and Cumberland Gap R. R. Co. and Allison, Shafer & Co., and requiring said intervenors to present forthwith the demand involved in said chancery cause to this court for adjudication in this cause.

And argument of counsel having been heard, and the questions involved having been duly considered, it is ordered, adjudged, and decreed by the court that the prayer of said petition be denied, and that said petition be dismissed with costs.

125 *Petition of J. T. Shields, Jr. Filed July 14th*, 1893. *H. H. Taylor, Clerk.*

In the Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

THE ATLANTIC TRUST COMPANY
vs.
THE MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*
In Equity.

To the honorable the judges of the circuit courts of the United States:

Your petitioner, James T. Shields, a citizen of Knox county, Tennessee, respectfully represents and shows unto your honors as follows:

"I."

That on May 28th, 1892, one John Coleman, as sole complainant, filed an original bill in this court alleging an indebtedness upon contract against certain defendants, Allison, Shafer & Co., and seeking by garnishment to reach an alleged balance in the hands of The Morristown & Cumberland Gap Railroad Company, also made a defendant thereto, and to have the same declared a lien upon said railroad, and for a decree that the property of said corporation be sold in satisfaction thereof.

Such proceedings were had in said cause as that on the 6th day of June, 1892, Frank J. Hoyle was duly appointed receiver *of* this court of said railway company, who qualified on June 7th and was duly prepared and authorized to enter into the possession of said property and the discharge of [the duties incident to said trust.

On June 8th, 1892, said Morristown and Cumberland Gap
126 Railroad Company filed its petition in said cause in which it prayed that it might be allowed to execute a bond to the complainant Coleman in such terms and conditions as should be fixed by your honors and such as would secure the complainant in any sum which might be finally sh*o*wn to be due from it to said complainant on account of the matters and things alleged in said bill.

Said petition was presented on the same day, to wit, June 8th, 1892, to the Honorable D. M. Key, judge, etc., who made thereon an order in words and figures following:

Circuit Court of the United States at Knoxville for the Northern Division of the Eastern District of Tennessee.

JOHN COLEMAN
vs.
THE MORRISTOWN & CUMBERLAND GAP R. R. CO. *et al.*

The petition of the Morristown and Cumberland Gap Railroad Company having been presented and by me duly considered, it is now ordered that the prayer thereof be granted, and the said Morristown and Cumberland Gap Railroad Company may execute a bond to the complainant, with surety to be approved by me, that it will pay off and discharge the amount which it may finally appear that the Morristown and Cumberland Gap Railroad Company is liable to complainant, by reason of a lien or otherwise, on account of work done or materials furnished by him to the Morristown and Cumberland Gap Railroad Company, and the costs incurred by complainant in this suit.

Whereupon the petitioner, The Morristown and Cumberland Gap
Railroad Company, produced a bond, with J. H. Rathburn
127 as surety, whose solvency having been investigated by me, it is ordered that said bond be, and the same is, now approved, and that the order appointing the receiver herein be, and the same is hereby, vacated and the said receiver discharged.

June 8th, 1892.

D. M. KEY, *Judge.*

(Entered June 8th, 1892, on Book "M," page 6.)

And thereupon, on June 9th, 1892, the said Frank J. Hoyle, receiver, etc., turned over said railroad and its belongings to said Morristown and Cumberland Gap Railroad Company and took therefor the receipt of said company through its general manager,

H. E. Drew, as will fully appear by reference to original paper attached to said receiver's report filed in said cause June 10th, 1892.

"II."

Said Coleman declares in his said bill that it is a general creditors' bill, and that said Morristown and Cumberland Gap railroad is an insolvent corporation, but petitioner is advised that, as the said Coleman was not a judgment creditor of said corporation, the circuit courts of the United States ought not to entertain jurisdiction of said bill as a creditors' bill at the suit of said Coleman, and he is further advised that upon the execution of bond by said corporation to pay such judgment as the said Coleman might recover he could not thereafter prosecute said cause other than solely for himself, and that having failed to bring all pending claimants and lienors before the court, and having failed to bring before the court the Atlantic Trust Company of New York, which was and is the holder of the legal title to all said Co.'s property and of a duly registered mortgage to secure one million ($1,000,000.00) dollars of bonds of date and record prior to the filing of said bill, and having failed to pray for
128 and secure an order restraining other suits against said corporation, that said bill wholly fails in all the essential elements of a creditors' bill.

A duly certified copy of said mortgage to said Atlantic Trust Company is made an exhibit to complainant's bill filed in this cause and the same is now here referred to and is prayed to be taken and treated as an exhibit to this petition.

"III."

Upon the execution of the bond and the granting of the order vacating the appointment of said receiver, as hereinabove detailed, said Morristown and Cumberland Gap Railroad Company resumed the custody, control, and operation of said railroad and continued therein until the 28th day of October, 1892, on which date this petitioner, acting under the authority and appointment of the chancery court of Hamblen county, Tennessee, took possession of said railroad, its belongings, etc., under and by virtue of certain orders and decrees pronounced in the case of Thomas B. Crosby *et al. vs.* The Morristown and Cumberland Gap Railroad Company *et al.*, as will more fully appear by reference to a duly certified copy of the bill filed in this court and of the order made thereon, which are appended to and made a part of the petition filed by this petitioner in said cause of John Coleman *vs.* The Morristown and Cumberland Gap Railroad Company *et al.* as Exhibit No. 2 thereto, and which said exhibits are now referred to and are prayed to be taken and treated as a part of this petition the same as though incorporated herein.

"IV."

Immediately upon the appointment and qualification of your petitioner under the order of said chancery court he took pos-

session of said railroad and its belongings and remained continuously in its possession and operation until the 14th day of November, 1892, when he turned the same over to W. S. Whitney,
129 who claimed to be entitled to the possession of said property under an order made by this court in said cause of John Coleman *vs.* The Morristown and Cumberland Gap Railroad Company *et al.*, above referred to on November —, 1892, and to which order for greater specification reference is hereby made.

"V."

On January 2nd, 1893, judgments by default were entered before the master at rules in said case of Thomas B. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Company *et al.*, and on January 7th, 1893, an order was made in said cause by the chancellor at chambers requiring this petitioner to intervene in this cause in this court and test and contest the jurisdiction of this court touching the administration of the affairs of said corporation as an insolvent corporation.

Duly certified copies of said orders and decrees are herewith filed, marked Exhibits "3" and "4," respectively, and are prayed to be taken and treated as a part of this petition.

"VI."

Your petitioner further shows that when said bill in the case of Thomas B. Crosby *et al. vs.* The Morristown & Cumberland Gap Railroad Company *et al.* was filed in said chancery court the said Morristown and Cumberland Gap Railroad Company was in the actual and unobstructed possession of said line of railroad and was engaged through its agents in its operation, and that the complainants in said bill, being judgment creditors of said corporation and the holders of declared and adjudicated liens upon said line of railway, were entitled to have said property impounded in a court of competent jurisdiction under a proper proceeding instituted for that purpose, and that said proceeding as instituted brings before that court by proper averment the rights of all lienors upon
130 said property, making the owners of such liens parties to said proceeding, and that the institution of said suit and the filing of said bill and the appointment of this petitioner as receiver of said corporation on October 28th, 1892, were and are in all respect- regular, valid, and binding upon said corporation and its creditors, and that said chancery court of Hamblen county acquired and holds jurisdiction of said corporation and of its affairs, and is entitled to maintain the same.

Your petitioner further respectfully represents that the release of said corporation's property to the custody and control of its officers and agents upon the execution of said bond and the vacation of the appointment of a receiver as shown by said order of June 8th, 1892, thereby suspended the custody and jurisdiction of this court over said defendant's line of railway in such manner as to permit another

court of concurrent jurisdiction to acquire under proper proceeding sole jurisdiction of said corporation and to appoint and maintain a receivership therein.

"VII."

On the 23rd day of January, 1893, this petitioner intervened in this court in said cause of John Coleman *vs.* Morristown & Cumberland Gap Railroad Co. *et al.* and moved the court to vacate the order made therein appointing said Whitney temporary receiver of said railroad and for a decree remanding the jurisdiction of said corporation and its affairs to the chancery court of Hamblen county to the said cause wherein this petitioner was appointed receiver.

On the — day of ——, 1893, this court overruled said motion and refused to vacate said order; to which action of the court this petitioner excepted in law; and thereupon, on the — day of ——, 1893, this court appointed Jackson Smith permanent receiver of said Morristown & Cumberland Gap Railroad Co. and delivered to him the custody and possession of same.

131 "VIII."

Your petitioner further shows to the court that on the — day of ——, 1893, the Atlantic Trust Company of New York filed its certain original bill in this honorable court against said Morristown and Cumberland Gap Railroad Company, numbered — on the rule docket of this court, under which said proceeding the said Atlantic Trust Company seeks to foreclose the certain mortgage mentioned in its said bill and being the same mortgage set out and described in said chancery cause of T. B. Crosby *et al. vs.* The Morristown and Cumberland Gap Railroad Company, and of which matters and things the said chancery court of Hamblen county, Tennessee, at Morristown, took and had full and complete jurisdiction.

In said last-named case pending in this court and entitled "Atlantic Trust Company *vs.* Morristown and Cumberland Gap Railroad Company" an order has been made extending the receivership of said Jackson Smith over said railroad to said cause and consolidating the same with said other cause of John Coleman *vs.* The Morristown and Cumberland Gap Railroad Company and others.

"IX."

Your petitioner respectfully insists that the jurisdiction of said chancery court of Hamblen county over the property and effects of said Morristown and Cumberland Gap railroad as acquired under the proceedings had and the appointment of this petitioner as receiver thereof made in said cause of T. B. Crosby *et al. vs.* The Morristown and Cumberland Gap Railroad Company *et al.* became and was absolute and exclusive, and that the order made in said cause of John Coleman *vs.* Morristown and Cumberland Gap Railroad Company appointing a temporary receiver of said property in this court was erroneous, and that the motion made by this peti-

tioner to vacate said order was rightfully made, and that the
132 order denying said motion as made by this court was erroneously made, and that the appointment of Jackson Smith as such permanent receiver was erroneously made and was without and beyond the jurisdiction of the court under the circumstances stated.

"X."

Your petitioner is advised and charges that the order made by this court in said cause entitled "The Atlantic Trust Company *vs.* The Morristown and Cumberland Gap Railroad Company," in and by which the receivership of said Jackson Smith, under appointment by this court, over said railroad company was so enlarged and extended as to embrace said cause was erroneous, and that the said chancery court at Morristown, having jurisdiction of said property and of said railway corporation and of its affairs, was the only court having power and jurisdiction to make said order, and your petitioner is advised that it is his duty, as being vested with legal title to said property under the orders of said chancery court at Morristown appointing petitioner its receiver, to intervene herein and to test and contest said question of jurisdiction.

"XI."

Your petitioner therefore prays that an order may be made permitting him to file this petition in said case of The Atlantic Trust Company *vs.* The Morristown and Cumberland Gap Railroad Company, and that he may be made a party defendant thereto, with leave to set up title to said property, by virtue of said chancery court proceedings, and that all orders and decrees may be made therein in respect thereto as to the court may seem proper.

And, as in duty bound, etc.

JOHN K. SHIELDS,
TULLY R. CORNICK,
Solicitors.

133 UNITED STATES OF AMERICA, }
Northern Division of the Eastern District of Texas. }

Personally appeared before me James T. Shields, Jr., who, being sworn, says that the averments made and contained in the foregoing petition as true are true, and that those stated as upon information and belief he believes to be true.

J. T. SHIELDS, JR.

Sworn and subscribed before me this June 8th, 1893.

[NOTARIAL SEAL.] CHARLTON B. BROOKE, *N. P.*

ATLANTIC TRUST COMPANY }
vs. }
MORRISTOWN AND CUMBERLAND GAP RAILROAD CO. }

The parties hereto consent that the exhibits attached to the petition of James *Shields* T. Shields, Jr., filed on January 23rd, 1893, in

the case of J. Coleman *vs.* M. and C. G. R. R., pending in this court, may be treated as exhibits to this petition, the purpose hereof being to save costs and a duplication of the record.

This June 13th, 1893.

(Signed) THE ATLANTIC TRUST CO.,
By M. C. ILWAINE, *Att'y.*
MORRISTOWN & CUMBERLAND GAP R. R. CO.,
By HELM & BRUCE, *Att'ys.*
JOHN K. SHIELDS,
TULLY R. CORNICK, *For Shields.*

I agree to be bound as surety for costs upon this petition.
July 12, '93.

TULLY R. CORNICK.

134 *Decree. Entered Journal "N," p.* 174, *Jan.* 31, '94. *H. H. Taylor, Clk.*

WEDNESDAY MORNING, *January* 31*st*, 1894.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge of United States district court for the eastern and middle districts of Tennessee.

JOHN COLEMAN
vs.
M. & C. G. R. R. Co. *et al.*

and

ATLANTIC TRUST CO.
vs.
M. & C. G. R. R. Co. *et al.*

} Consolidated Causes.

In these consolidated causes James T. Shields, Jr., by his solicitors, appeared and moved the court to vacate the orders made in this cause appointing a temporary receiver of the defendant The M. and C. G. R. R. Co., and the order appointing a permanent receiver of said railroad company, assuming jurisdiction of the affairs of said defendant corporation, The M. and C. G. R. R. Co., as an insolvent corporation, and as grounds for said motion assign as follows:

"I."

The circuit courts of the United States, sitting in equity, have no jurisdiction to entertain a creditors' bill until after the demand of the complainant shall have been reduced to judgment nor when the complainant is not a creditor of the defendant corporation and the same is only before the court as garnishee.

135 "II."

When the defendant The Morristown and Cumberland Gap Railroad Company gave bond to pay such judgment as the complainant

Coleman might recover, this suit became by operation of law a suit for and in behalf of the complainant Coleman in his personal capacity and could not thereafter be continued as a general creditors' bill.

"III."

The original bill as filed did not seek a restraining order and none was ever granted inhibiting the bringing of independent suits against said corporation by its other and numerous creditors.

"IV."

The bill as filed does not bring before the court the requisite and necessary parties whose presence must be had as a condition precedent to the granting of complete relief and the making of such decrees as would confer upon the purchaser of said railroad under the decree of sale which was sought to be recovered a full and clear title to said property—that is to say, a mortgage — secure one million dollars of bonds executed to the Atlantic Trust Company of New York was resting upon said property, no mention whereof was made in the original bill.

"V."

After a decree had been entered in this cause vacating the order of June 6th, 1892, appointing a receiver of said corporations, on, to wit, October 28th, 1892, in a cause pending in the chancery court of Hamblen county, Tennessee, entitled "Thomas B. Crosby *et al. vs.* The Morristown and Cumberland Gap Railroad Co. *et al.*," to which said cause all necessary parties were made parties, and which was filed for other purposes than that included in this case, the said railroad and all the property and effects belonging
136 thereto, being then in the actual possession of said railroad company, its officers and agents, were by decree and order of said chancery court pronounced and passed in the above-named case placed in the custody and control of James T. Shields, Jr., the mover of this motion, as receiver and officer of said court in said cause.

Wherefore it is respectfully insisted that said chancery court of Hamblen county then acquired and yet retains the absolute and exclusive jurisdiction of the affairs of said railroad and of said corporation, The Morristown and Cumberland Gap Railroad Company, and has the exclusive right to appoint a receiver of the property of said corporation, and said James T. Shields, Jr., now moves the court to vacate the order made in this cause on November —, 1892, appointing W. S. Whitney receiver of said railroad and said Morristown and Cumberland Gap Railroad Company, and to vacate the order made in this cause on February —, 1893, appointing said Jackson Smith permanent receiver of said railroad company and for an order restoring said railroad and its property to the possession of said James T. Shields, Jr., as such receiver, etc.

And in support of said motion said James T. Shields, Jr., presented the duly certified transcript of the record of the chancery

court of Hamblen county, Tennessee, in the case pending in said court entitled "Thomas B. Crosby and others *vs.* M. and C. G. R. R. Co. *et al.*, as exhibited with his petition filed herein on January 23rd, 1893, and as referred to in his petition filed herein on July 14th, 1893, averring that it is made to appear to the court by inspection of the records that said James T. Shields, Jr., was, on October 28th, 1892, appointed receiver in said chancery court at Morristown of the property and effects of said railway corporation under an order made in said above-entitled cause, and was at the time of the seizure of the same by this court in this cause in rightful possession thereof as agent and officer of said chancery court, and the
137 court, being of opinion that said James T. Shields, Jr., is not entitled to the possession and custody of said property under the orders and decrees exhibited with his said petitions, doth overrule and disallow said motion and doth dismiss the said petition filed January 23rd, 1893, in said cause of John Coleman *vs.* M. and C. G. R. R. Co. *et al.*, and said petition filed July 14th, 1893, in said cause of the Atlantic Trust Company against M. and C. G. R. R. Co. *et al.*, now consolidated with said above-named cause, and doth order that said James T. Shields, Jr., and the sureties upon his prosecution bond, John K. Shields and Tully R. Cornick, pay the costs in this court incident to the filing of the said foregoing petitions for which execution is awarded.

To which action of the court in overruling said motions and dismissing said petitions said James T. Shields, Jr., excepts in law.

Thereupon T. Mellon & Sons appeared by their solicitors and moved the court, upon the grounds herein set out in the motion of the said James T. Shields, Jr., and for the reasons incorporated in said motions, to vacate the orders made in said above-named causes appointing temporary receiver of said property and the permanent receiver thereof by this court, and to remand the custody and jurisdiction of said property to said chancery court of Hamblen county, to be there disposed of by said chancery court in said cause of Thomas B. Crosby *et al. vs.* M. and C. G. R. R. Co. *et al.*, and in support of said motion presented to the court the record of said cause and the orders therein made, as filed with and exhibited by said James T. Shields, Jr., under his said petition filed herein on January 23rd, 1893, above referred to, and the court, being of opinion that said motion is not well taken, doth overrule and disallow the same; to which action of the court the said T. Mellon and Son except in law.

138 *Final Decree. Entered Journal "N," p.* 177, *Jan.* 31, '94. *H. H Taylor, Clk.*

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY. } ≠ 942.

THE ATLANTIC TRUST CO. OF NEW YORK
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY. } ≠ 942.

Consolidated Causes.

This cause came on for hearing before the Honorable D. M. Key, &c., on this 31st day of Jan., 1894, upon the pleadings and proof in the case, and, the report and supplementary reports of H. H. Taylor, special master, and argument of counsel having been heard and considered by the court, it is thereupon ordered, adjudged, and decreed—

I.

That the Morristown & Cumberland Gap Railroad Company and Allison, Shafer & Co. are not identical, and that neither one was the agent for the other in the transaction set up in this cause, but Allison, Shafer & Co. were the principal contractors with said railroad Co. for the construction of its railroad, and the rights of the parties to this cause are to be determined upon that basis.

II.

That the receiver's certificates heretofore ordered to be issued in this cause and which have been used by the receiver and also the other expenses of the receivership constitute a prior lien upon the Morristown & Cumberland Gap railroad and other property involved in this cause, which lien is prior and superior to the liens
139 and claims of all other parties and is here designated as class "A."

III.

That the State, county, and municipal taxes duly and regularly assessed be a lien upon said railroad and property next in order of priority to said receiver's certificates and expenses and is here designated as class "B."

IV.

That the claims for rights of way, as hereinafter adjudged, constitute a lien upon said railroad and property next in order of priority to said tax lien and are here designated as class "C."

V.

That the claims of subcontractors, materialmen, engineers, attorneys, other employés, and the claims for injury to persons and

live stock, which occurred in the operation of the road for the amounts hereinafter adjudged, constitute a lien upon said railroad and property next in order of priority to the said right-of-way lien and are here designated as class "D."

VI.

That the claims of bondholders holding bonds of said Morristown & Cumberland Gap railroad and secured by mortgage exhibited in this cause constitute a lien upon said railroad and property next in priority to the liens of said subcontractors, materialmen, etc., named in the 5th item, and are here designated as class "E."

VII.

That all other claims set up in this cause constitute general debts against said railroad company or against said Allison, Shafer & Co., as hereinafter decreed, and are not a lien upon said railroad
140 or its property, but such as shall be hereinafter adjudged to be general claims against said railroad are to be paid *pro rata* out of any surplus of the proceeds of the sale of said railroad and property which may be left after paying in full the lien claims heremhefore decreed and are here designated as class "F."

And execution to be issued for the payment of such claims as shall hereinafter be adjudged to be debts against Allison, Shafer & Co., which are here designated as class "G."

VIII.

That the purchaser or purchasers of said railroad at the sale hereinafter ordered shall have the right to pay in as purchase-money any of the lien claims hereinbefore adjudged, provided that all lien claims which have been adjudged to be prior to such as shall be offered in payment by said purchaser or purchasers shall have been paid or provided for.

IX.

That the Morristown & Cumberland Gap Railroad Co. shall have four (4) months from this date within which to pay into court the full amount of all the lien claims and general claims hereinbefore generally adjudged and hereinafter adjudged in detail, and unless said railroad Co. shall within the said four months pay into the court a sufficient amount to pay and satisfy said claims, then said railroad, franchises, depots, side tracks, water tanks, equipments, tools, right of way, and all the other property appurtenant to said railroad and used in connection therewith shall be sold at public auction as a whole by the special commissioner hereinafter appointed upon the following terms, to wit:

Said sale shall be made in front of the United States post-office and custom-house building, in the city of Knoxville, Tennessee, to the highest bidder; $20,000 of the purchase-money shall be paid

in cash by the purchaser, and for the balance said purchaser
141 or purchasers shall execute his or their two notes, with personal or collateral security to the satisfaction of the special commissioner, bearing interest from date and payable to the order of the special commissioner at six (6) and twelve (12) months after date, and a lien shall be retained upon the property so sold to further secure the payment of said note; said sale shall be made in bar of the equity of redemption, but said special commissioner will receive no bid less than one hundred and ten thousand (110,000.00) dollars, which is hereby fixed as the minimum price at which said property shall be sold at said sale.

The said special commissioner shall advertise the time, place, and terms of said sale in the Knoxville Tribune, a newspaper published in Knoxville, Tennessee, for sixty (60) days before said sale.

X.

By consent of all parties in this cause, given by their solicitors in open court, H. H. Taylor, clerk of this court, is hereby appointed special commissioner to make said sale.

XI.

The claims and debts set up in this cause and hereinbefore provided in classes are hereby adjudged in detail as follows; and it is further ordered, adjudged, and decreed that the parties hereinafter named in classes "A," "B," "C," "D," "E," and "F" have and recover of the Morristown & Cumberland Gap Railroad Company the several amounts set opposite their names respectively, and that the several parties named in class "G" have and recover of Allison, Shafer & Co. the several amounts set opposite their names.

142 Class "A."

The receiver will, on or before the first day of June, 1894, make a report showing what receiver's certificates have been issued by him and when and to whom they were issued, and showing the unpaid expenses of his receivership and to who- due. The clerk of the court will, on or before the first day of June, 1894, tax up all such costs as shall be adjudged to be payable out of the fund in this court, and file such taxation of costs in this cause.

Class "B."

Taxes due the State of Tennessee for the year 1892, amounting, with interest and attorney's fee to this date, to the sum of $411.23.

County taxes due to Grainger county, with interest and attorney's fee to this date, for the year 1892, $785.12, and all other taxes remaining due and unpaid at the date of sale.

Class "C."

Right-of-way Claims.

	G. O. W. Renfrow	$403 40
	Marian Davis, Nancy Davis, and Mary E. Roach	138 10
	J. H. Renfrow	528 40
	J. H. Cannady	259 53
	H. T. Cannady	201 86
	Leander and Amanda Dalton	57 62
	James H. Peck	230 98
	Marian P. Maples & wife	316 25
	John P Bowen *et al.*	179 40
	John P. Bowen *et al.* (costs)	28 05
	William Harrell & wife, Minerva	90 15
	R. S. Dodson	288 60
143	Mrs. L. D. McGhee, assigned to Leon B. Smith	57 22
	" " costs	29 19
	Garvin Goodlett	138 21
	" " costs	18 04
	J. C. Brown and B. F. Stubblefield	
	" " " " " costs	16 70
	J. H. Wester	693 00
	James E. Hammers, Reuben Hammers, Martha Hammers, and Mary Hammers	288 25
	Y. Franklin Long	349 83
	William Z. Hammers	116 38
	" " " costs	13 00
	Eonas Hammers	58 19
	" " costs	13 00
	B. F. Williams and Sarah Adkinson, for	1,299 00
	With interest from Dec. 9, 1892, and costs	90 00
	J. F. Heyworth, for	150 00
	With interest from Dec. 6th, 1892, and costs	12 65
	Jesse Golding & wife, for	88 00
	With interest from Dec. 8th, 1892, and costs	17 60
	J. and Estells Swatz, for	356 50
	With interest from Jan. 3rd, 1893, and costs	30 90
	Mrs. Jennie Huffmaster *et al.*, for	148 35
	With interest from Jan. 5th, 1893, and costs	23 20
	John Miller, for	276 00
	With interest from Dec. 30th, 1892, and costs	48 50
	James Bozeman, for	125 00
	With interest from Aug. 2nd, 1892, & costs	12 55
	J. M. Lowe, for J. McHenderson, assignee, am't	220 00
	L. C. Bryan	110 00
144	Madison academy, for	100 00
	With int. from Oct. 20th, 1890, & costs	18 30
	E. T. Sanford, trustee for J. R. Mitchell *et al.*	572 50
	W. J. Haecker, Armilda, Maud, Ida, and Ed. Haecker	
	Allien Hathway and E. Looney	

—— Hathaway, Nellie Looney, B. Crutcher, & Mollie Crutcher..... 1,215 00
James S. Gill, for..... 1,130 00
With int. from Dec. 5th, 1892, & costs..... 403 14
J. S. Gill & wife, for..... 1,473 52
With int. from Dec. 5th, 1892, & costs.....
Thomas B. Crosby, for..... 2,409 00
With int. from July 11, 1892, & costs..... 337 70
W. T. Murray *et al.*, for..... 1,889 25
With int. from Dec. 8, 1892, & costs..... 378 95
James T. Shields, for..... 2,603 00
With int. from Dec. 10, 1892, & costs..... 188 12
William McConnell, for..... 700 00
With int. from April 6th, 1892.....
John Phillips, for..... 150 00
With int. from Dec. 6th, 1891, & costs..... 22 35
John M. Helton, for..... 445 33
With int. from April 9, '92, & costs..... 20 75
Lucinda Campbell, ex'r, for..... 900 00
With int. from Dec. 10, 1892, & costs..... 32 40
J. H. Campbell, for..... 204 00
With int. from Aug. 1, '92, & costs..... 12 15
James N. Henry & wife, for..... 1,386 60
With int. from Sept. 19, '93, & costs..... 240 21
B. H. Bruce, adm'r, for..... 1,323 40
With int. from July 8, '92, & costs..... 107 31
B. H. & Jenny Bruce, for..... 1,534 30
145 With int. from Dec. 8, '92, & costs..... 54 38
Rachel Jarragin, ex'r'x, for..... 1,120 00
With int. from Aug. 4, '92, & costs..... 99 37
Patrick Shirley, for..... 480 94
With int. from Dec. 9th, 1892, & costs..... 159 30
Luther Higgs *et al.*, for..... 434 75
With int. from Dec. 9, '92, & costs..... 145 95
W. F. M. Troutt, for..... 1,695 00
With int. from Dec. 10, '92, & costs..... 26 39
A. N. Shields, for..... 337 50
With int. from Dec. 10, '92, & costs..... 11 95
Thos. F. Davis, for..... 169 80
With int. from Dec. 10, '92, & costs..... 13 00
H. E. Smith, for..... 250 00
With int. from Dec. 10, '92, & costs..... 13 55
Walter Roberts *et al.*, for..... 35 00
With int. from Oct. 20th, '90, & costs..... 28 60
G. W. Livingston..... 115 44
H. W. Parrow..... 346 32
Thos. Bailor..... 404 04
Thos. B. Carmichael..... 230 88
T. B. Foster..... 55 00
A. H. Foster..... 150 21
G. A. Shirley..... 230 00

R. C. Bunch	345	00
S. F. Brabson	177	07
Woodson Taylor, for	2,970	17
With int. from Apr. 18, '93, & costs	274	22
146 T. W. Joyce *et al.*, for	904	00
With int. from Apr. 20, '93, & costs	110	30
J. T. Harper, for	632	50
With int. from Apr. 3, '93, & costs	50	90
J. L. Acuff *et al.*, for	462	00
With int. from Apr. 19, '92, & costs	34	15
William Aiken, for	1,165	00
With int. from Apr. 20, '93, & costs	42	90
J. H. Landin, for	1,050	83
With int. from Apr. 9, '93, & costs	74	59
J. H. Herrell, for	240	25
With int. from Aug. 1, '92, & costs	19	95
John Harris, costs	111	28
Mary Harris, costs	22	10
G. B. Mitchell, adm'r, costs	25	75
J. T. Rutherford, costs	21	20
James T. Shields, costs	146	30
George Carter, costs	34	72
H. E. Jarnagin, costs	17	21
C. Y. Crawford & wife, costs	10	30
A. X., Anne E., and Lizzie H. Shields, for	1,711	10
With int. from Aug. 10, '93, & costs	123	25
W. T. & J. O. Phillips *et al.*, for	300	00
With int. from Aug. 8, '93, & costs	44	90
R. T. Van, by consent of Van	400	00
" " " costs	86	00

147 Class "D."

Subcontractors, Materialmen, etc.

John Coleman	4,319	33
Hilton & Sanders	211	22
G. McHenderson	2,873	50
Frank J. Hoyle	122	50
D. M. Gray	41	20
J. L. Alexander	20	60
J. M. Sawyers	5	50
M. A. Phelps	59	35
A. M. Coran	29	50
Sheals Thorp	26	00
T. L. Long	43	50
Allen S. Tate	1,103	89
F. J. Mozier	3,967	44
T. Mellon & Sons, assignee of S. T. Shields *et al.*	5,174	10
With interest from Aug. 24th, 1892, and costs	29	89
William McFarland	1,265	00
H. Loop & Co	318	60

T. B. Davis	42	00
William Needham & Jno. K. Shields, assignees of L. C. Kinder, for	367	87
With interest from April 3, '93, and costs	10	50
Knoxville Iron Company, for	8,494	91
And costs	15	00
W. F. M. Troutt	15	00
N. I. Rucker, for	75	00
With interest from March 28th, 1892, and costs	9	00
W. W. Fennel, administrator	535	00
John Collison, for	18	00
148 With interest from Oct. 22nd, 1892, and costs	6	65
Goodman Roberts	25	00
Henry Trobaugh, by consent	100	00

Class "E."

Bondholders.

T. Mellon & Sons	$201,499	20
Coal & Iron Bank of Middlesboro', Ky	323,838	00
First National Bank of Middlesboro', Ky	14,392	80
The Kentucky National Bank of Louisville, Ky	29,985	00
Jordan L. Mock, Jr., of New York	629,685	00

Class "F."

General Claims against the M. & C. G. R. R.

Coal & Iron Bank of Middlesboro', Ky	$24,511	96
Allen S. Tate	410	20
G. McHenderson	1,099	25
T. H. McCoy	5,263	71
A. L. Manley	315	75
H. E. Drew	6,430	00
Thomas Tomlinson	64	85
W. A. Mayse, Robert Wood, & J. T. Essary	27	90
Mrs. R. B. Owens	257	73
Warren Easley and wife	10	00
R. T. Van	10	50

Class "G."

Claims against Allison, Shafer & Company.

The Coal & Iron Bank of Middlesboro', Ky..... $131,226 63

In which is included the sum of $24,511.59 hereinbefore
149 adjudged against the railroad as maker of a note endorsed by Allison, Shafer & Company.

Clarence Cary, receiver of the K. C. G. & L. R. R.	$6,092	88
The Youngstown Bridge Company, as heretofore adjudged		
Weir Frog Company, as heretofore adjudged		
John W. Heron, adm'r, as heretofore adjudged		
Montague, as heretofore adjudged		
John Anderson	98	89
Robert Bobb	403	10

It is further ordered, adjudged, and decreed that the title to the rights of way for which judgments have been hereinbefore rendered in favor of the parties named as "class C" be, and hereby are, divested out of said several parties and vested in said Morristown and Cumberland Gap Railroad Company.

It is further ordered, adjudged, and decreed that the bonds of the Morristown and Cumberland Gap Railroad Company for which judgments — in favor of the parties hereinbefore named in class "E" be surrendered to the clerk of this court and by him destroyed.

It is further ordered, adjudged, and decreed that the judgments hereinbefore pronounced in favor of T. Mellon & Sons for the bonds held by them as collateral security shall be, when collected, applied to the payment of the claim of T. Mellon & Sons, for which said bonds are held as collateral and which has not been adjudicated, and if the amount collected on said bonds shall be more than enough to pay said claim for which they are held as collateral the surplus shall be distributed *pro rata* among the other bondholders.

It is further ordered, adjudged, and decreed that the
150 several claims of divers merchants and other persons who sold goods to Downs and Coleman, whose claims have been credited upon the claim of John Coleman herein, and the holders of the several orders drawn by Downs and Coleman to John Coleman on Allison, Shafer & Co. are disallowed as claims in this cause, said claims being the same claims set out in Exhibits "A" and "B" to John Coleman's deposition.

It is further ordered, adjudged, and decreed that the report and supplemental reports of the special master are confirmed so far as they are consistent with the adjudication hereinbefore made, and so far as they are inconsistent said reports are set aside and modified, and also that the exceptions filed by the several parties to said reports are sustained so far as they are consistent with the adjudication hereinbefore made, and they are overruled so far as they are inconsistent with said adjudication.

It is further ordered and decreed that this cause be again referred to the master for proof and report upon the large claim of T. Mellon & Sons, now pending in the chancery court at Morristown, and the claims of Jacob Lay, John Montgomery, and Allison, Shafer & Co., now pending in the circuit court at Rutledge, and any other claims that may be presented, and nothing in this decree shall be taken as an adjudication as — either the amount of said claims or whether any lien exists for the security of the same, all such questions being reserved until the coming in of said report.

And upon the application of James T. and John K. Shields, solicitors for James S. Gill, Sarah B. Gill, W. T. Murray *et al.*, Thomas B. Crosby, William Connell, John Phillips, J. N. Helton, Lucinda Campbell *et al.*, Joseph Campbell, James and Eliza Henry, B. H. Bruce, administrator, etc., D. H. and Jennie Bruce, Rachael Jarnagin *et al.*, Patrick Shirley, Luther Higgs *et al.*, W. F. M. Troutt, A. X. Shields, Thomas F. Davis, H. E. Smith, Walter Roberts
et al., Estells Swatta, J. H. Herrell, Woodson Taylor, William
151 Aiken, J. H. Lambden, T. W. Joyce *et al.*, J. L. Acuff, W.

T. Phillips *et al.*, R. T. Van *et al.*, Armilda Haecker *et al.*, J. T. Harper, G. W. Livingston, H. W. Perrow, Thomas Baylor, Thomas B. Carmichael, T. B. Foster, A. H. Foster, George Shirley, R. C. Bunch, S. F. Brabson, Grainger County, T. B. Davis, L. C. Kinder, William Needham, Hilton and Saunders, H. Loop & Sons, and John Collison, a lien is hereby declared upon all and each of the recoveries of all and each of said parties herein made and decreed to secure their reasonable fees for services rendered in obtaining their several recoveries and the collection of the same.

And upon the application of John B. Holloway and John T. Essary, solicitors for J. H. Wester, James E. Hammers, R. M. and Martha Hammers, Y. Franklin Long, W. Z. Hammers, Eonas Hammers, B. F. Atkinson *et al.*, J. F. Hayward, Jesse Goldin, Estella Swatts, Jennie Huffmaster *et al.*, John Miller, James Bozeman, J. M. Lowe, L. C. Bryan, Madison Academy, and Mrs. L. D. McGhee, a lien is hereby declared upon all and each of the several recoveries had by the said several parties above named in this cause to secure their reasonable fees for services rendered in obtaining and collecting said recoveries.

And upon application of Ingersoll and Peyton, solicitors for John Coleman, M. A. Phelps, A. M. Coran, T. L. Long, Frank J. Hoyle, Marion Davis, Nancy E. Davis, and Mary E. Roach, Hilton and Saunders, Marion and Mary Maples, John P. Margaret, Hugh S., A. S., W. A., Mary, Daniel W., Milton L., and Robert N. Bowen, W. W. Finnell, administrator of John Hinshaw, deceased; George and Martha Hinshaw, J. H. and H. T. Cannady, Leander and Amanda Dalton, James H. Peck, D. M. Gray, J. S. Alexander and J. M. Sawyers, George W. and J. H. Renfrow, Goodman Roberts, *and*
a lien is hereby declared upon all and each of the several re-
152 coveries of said parties in this case to secure their reasonable fees for services rendered in obtaining and collecting said recoveries.

On motion of the several solicitors hereinafter mentioned, liens are hereby declared on the recoveries hereinbefore had of William Harrell and wife Minerva, R. S. Dodson, Henry W. Trobaugh, L. D. McGhee, for the use of Leon D. Smith; Garvin Goodlett, Brown and Stubblefield, George Carter, and H. E. Jarnagin and others in favor of William McFarland and Washburn, Templeton, Pickle & Turner, their solicitors, for services rendered them in this cause; on the recovery of F. J. Moser in favor of G. McHenderson and Washburn, Templeton, Pickle and Turner, for their services as his solicitors in this cause; on the recovery of Allen S. Tate and Clarence Cary, receiver, in favor of Washburn, Templeton, Pickle & Turner, for services rendered as their solicitors in this cause, and on the recoveries of Coal and Iron Bank and the First National Bank of Middlesboro', Kentucky, in favor of Chapman, Nicol and Sampson and Washburn, Templeton, Pickle and Turner for their services as solicitors of said parties in this cause.

153 *Petition for Appeal. Filed July 24, '94. J. T. Carter, Deputy Clerk.*

Circuit Court of the United States, Northern Division, Eastern District of Tennessee. In Equity.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*

and

ATLANTIC TRUST COMPANY
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY.

\# —. Consolidated Causes.

To the honorable judges of this court:

Your petitioner, James T. Shields, Jr., suing as receiver of the Morristown and Cumberland Gap Railroad Company, respectfully represents that there is manifest error committed, to the injury of petitioner, by the final decree pronounced in this cause on the 31st day of January, 1894, and by the interlocutory orders and decrees theretofore pronounced in these —, in and by which said interlocutory orders and final decrees this court assumed and asserted jurisdiction of the property and effects belonging and constituting the estate of the defendant Morristown and Cumberland Gap Railroad Company as against the lawful custody and possession of this petitioner under orders and decrees theretofore pronounced by the chancery court of Hamblen county, Tennessee, in the cause
154 pending in said chancery court entitled "Thomas B. Crosby *et al. vs.* Morristown and Cumberland Gap Railroad Company *et al.*," under jurisdiction theretofore lawfully exercised and assumed, said chancery court being a court of equity of concurrent jurisdiction with this court, and which said chancery court of Hamblen county, Tennessee, was thereby ousted of the lawful jurisdiction, and this petitioner, as such receiver, became deprived of the lawful custody of the property and estate of said Morristown and Cumberland Gap Railroad Company, the subject-matter of controversy in the cause then and there pending in said court.

Wherefore petitioner, James T. Shields, Jr., receiver, etc., considering himself aggrieved, prays an order granting an appeal from said final decree and interlocutory orders, taking and exercising jurisdiction as aforesaid, to the Supreme Court of the United States, as authorized by section "V" of the act of Congress of the United States approved March 3rd, 1891, and petitioner herewith files his bond in the penal sum of five hundred dollars, which bond is approved by the Honorable D. M. Key, one of the judges of this court.

Petitioner further prays that supercedeas may be granted by the order of this court until the final determination of said appeal in the Supreme Court of the United States, and petitioner herewith files his assignment of error setting out separately and particularly each error asserted and intended to be urged.

JAMES T. SHIELDS, JR.,
Receiver of Morristown & Cumberland Gap R. R. Co.,
By TULLY R. CORNICK, *Atty.*

TULLY R. CORNICK, *Solicitor.*

154½ *Assignment and Specification of Errors. Filed July 23rd*, 1894. *H. H. Taylor, Clerk.*

Circuit Court of the United States, Northern Division, Eastern District of Tennessee. In Equity.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD CO. *et al.*

and

ATLANTIC TRUST COMPANY
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD CO.

= —. Consolidated Causes.

In this cause, being an appeal from the final decree of the circuit court of the United States for the northern division of the eastern district of Tennessee, asserting and enforcing jurisdiction of the property, assets, and effects of the defendant The Morristown & Cumberland Gap Railroad Company, pursuant to interlocutory orders and decrees made and entered during the progress of the cause, this appellant, James T. Shields, Jr., as receiver of said Morristown & Cumberland Gap Railroad Company, under appointment by the chancery court of Hamblen county, Tennessee, comes and says that in the record and proceedings in the above-entitled causes there is manifest error to his injury, and for cause thereof assigns the following grounds:

I.

That the circuit court erred in entertaining jurisdiction under the original bill filed herein by John Coleman as a creditors'
155 bill, because—

(*a.*) The complainant's demand had not been reduced to judgment before the filing of said bill.

(*b.*) The complainant did not aver an existing indebtedness against the Morristown & Cumberland Gap Railroad Company, and said company was made defendant for the purposes of garnishment and none other.

(*c.*) The bill as filed did not seek to restrain the bringing of independent suits against said railroad Co., and such order was not in fact granted.

(*d.*) The bill as filed did not bring before the said court all parties necessary to the assumption of jurisdiction and the granting of complete relief thereunder as a creditors' bill. Wherefore the order and decree made by said court on Nov. 7, 1892, sustaining said bill as a general creditors' bill was erroneous.

II.

That when the defendant railroad Co. gave bond with approved security on June 8, 1892, to pay such judgment as complainant Coleman might thereafter recover in said cause, said cause became by operation of law divested of its character as a creditors' bill and could not thereafter be prosecuted other than for the sole benefit of the complainants therein, and it was error for the circuit court to allow other creditors thereafter to intervene.

III.

That when the circuit court on June 8th, 1892, vacated the order appointing a receiver of the property of said railroad Co. because of the execution of bond by the said railroad Co., with approved security, conditioned to "pay off and discharge the amount which it may finally appear that the Morristown & Cumberland Gap Rail-
156 road Co. is liable to complainant by reason of a lien or otherwise," and restored the custody and possession of said property to said railroad Co., it, the said property, became subject to seizure at the suit of other creditors in such court of competent jurisdiction as might be selected for that purpose, and it was error for said circuit court thereafter to appoint, at the instance of said Coleman, a receiver of said property without first exhausting the remedy on said bond.

IV.

That when the chancery court of Hamblen county assumed jurisdiction of the property and effects of said Morristown & Cumberland Gap Railroad Co., on Oct. 28, 1892, in said cause entitled Thomas B. Crosby *et al. vs.* Morristown & Cumberland Gap Railroad Co. *et al.* and appointed on said last-named day a receiver of the property and effects of said railroad Co. and placed said receiver on said last-named day in the custody and possession of same it was error for said circuit court thereafter, on Nov. —, 1892, to appoint a receiver of the property and effects of said railroad Co. in this cause, and the jurisdiction then and there asserted and enforced by the circuit court and the seizure of the property and effects of said railroad Co. by the processes of this court and the ousting of said chancery court of its jurisdiction and the receiver of said chancery court of the possession, custody, and control of the said property and effects of said railroad Co. *was* erroneous.

V.

That the motion made and entered by the appellant in the circuit court of Jan. 23rd, 1893, to vacate the orders theretofore made by said court in this cause, appointing a temporary receiver of the defendant The Morristown & Cumberland Gap Railroad Co.,
157 and for an order restoring the custody and possession of said railroad and its property to this appellant as receiver under the orders and appointment of said chancery court of Hamblen county, Tennessee, was well taken and should have been sustained for the reasons assigned and set out in said motion and the petition and records filed in support of same, and the order made by this court on Jan. 30th, 1893, overruling and disallowing said motion was erroneous.

VI.

That all decrees made and entered by the circuit court after the filing by this appellant of the transcript of the record of the chancery court of Hamblen county, Tennessee, in said cause entitled Thomas B. Crosby *et al. vs.* Morristown & Cumberland Gap Railroad Company *et al.*, including the order made by said chancery court requiring this appellant to intervene in this cause in the circuit court and test and contest the jurisdiction of said court in the premises, were and are erroneous as and for the reason that the said chancery court of Hamblen county, Tennessee, had rightfully acquired jurisdiction of the subject-matter of controversy in said cause, to wit, the property and effects belonging to said defendant, The Morristown & Cumberland Gap Railroad Co., and had rightfully and lawfully committed same to the custody and control of this appellant as the receiver of said chancery court in said cause.

VII.

That the circuit court erred in entertaining jurisdiction under the bill filed in said court and consolidated with this cause, entitled the Atlantic Trust Co. *vs.* Morristown & Cumberland Gap Railroad Co., because the same was filed after the chancery court of Hamblen county, Tennessee, had taken full and complete jurisdiction of the property and effects of said defendant, The Morristown & Cumberland Gap Railroad Co., in said cause entitled Thomas B.
158 Crosby *et al. vs.* Morristown & Cumberland Gap Railroad Co. *et al.*, and had appointed a receiver of said corporation as an insolvent corporation under a general creditors' bill, and had made and passed an order restraining all creditors of said corporations from bringing suit or seeking to enforce demands against said corporation except in said cause in said chancery court.

VIII.

That the circuit court erred in the making of the order and decree of Jan. 31st, 1894, overruling this appellant's motion to vacate the orders appointing temporary and permanent receivers of said defend-

ant, Morristown & Cumberland Gap Railroad Co., and taking jurisdiction of the administration of the affairs of said corporation as an insolvent corporation for the reasons set out at length in said decree.

IX.

That the final decree pronounced by the circuit court on Jan. 31st, 1894, adjudging the rights and priorities of the creditors of said Morristown & Cumberland Gap Railroad Co. and ordering that the property and effects of said railroad Co. should be sold in satisfaction thereof under decree of said court was erroneous, in that the chancery court of Hamblen county, Tennessee, had theretofore, to wit, on Oct. 28th, 1892, acquired full, complete, and exclusive jurisdiction to administer the affairs of said Morristown & Cumberland Gap Railroad Co. as an insolvent corporation in a proceeding duly instituted for that purpose, having before said chancery court all proper and necessary parties, and by reason of the premises the circuit court was without the requisite and necessary jurisdiction to lawfully make and enforce its said final decree.

TULLY R. CORNICK, *Solicitor.*
JAS. T. SHIELDS,
Receiver of Morristown & Cumberland Gap R. R. Co.,
By TULLY R. CORNICK, *Att'y.*

159 *Appeal Bond. Filed July 24th, 1894. H. H. Taylor, Clerk, by J. T. Carter, Dep. Clk.*

Circuit Court of the United States for the Northern Division of the Eastern District of Tennessee.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD Co. *et al.*
} Consolidated Causes.

Know all men by these presents that we, James T. Shields, Jr., receiver, etc.: Tully R. Cornick, and George W. Henderson, are held and firmly bound unto John Coleman and others in the penal sum of five hundred dollars, to be paid to the said John Coleman and others, their heirs and assigns; for which payment, well and truly to be made, we bind ourselves and each of us and each and every of our several heirs, executors, and administrators, jointly and severally, firmly by these presents.

Witness our hands and seals on this the 24th day of July, 1894.

Whereas the above-named James T. Shields, Jr., receiver of M. & C. G. R. R. Co., has prosecuted an appeal to the United States Supreme Court, to be holden at Washington, to reverse the decree rendered in the above-entitled suit in said court by the judge of the circuit court of the United States for the eastern district of Tennessee:

Now, therefore, the condition of this obligation is such that if the

above-named James T. Shields, Jr., receiver, shall prosecute said appeal to effect and answer all damages and costs if he shall fail to make said appeal good, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JAS. T. SHIELDS, JR.,
Rec'r of M. & C. G.
TULLEY R. CORNICK, *Att'y.*
TULLEY R. CORNICK. [SEAL.]
GE. W. HENDERSON. [SEAL.]

Approved:
D. M. KEY.

160 *Order Granting Appeal. Filed July* 24, 1894. *H. H. Taylor, Clk.*

Be it remembered that at a circuit court of the United States began and held for the northern division of the eastern district of Tennessee at the court-house, in the city of Knoxville, within said district and the sixth circuit, on the second Monday, it being the ninth day, of July, A. D. 1894—present and presiding, the Hon. D. M. Key, judge, etc.—the following proceedings were had, to wit:

TUESDAY MORNING, *July 24th*, 1894.

Court met parsuant to adjournment.
Present and presiding: The Hon. D. M. Key, judge, etc.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et al.*

Upon consideration of the petition for appeal to the Supreme Court of the United States filed herein by Jas. T. Shields, Jr., as receiver of the M & C. G. R. R. Co. under appointment by the chancery court of Hamblen county, Tennessee, it is ordered that said appeal be granted, bond therefor in the penalty of five hundred dollars having been executed and approved by the court.

It is further ordered that the petition for supersedeas be denied.

This appeal is granted solely upon the question of jurisdiction, and unless counsel shall agree by stipulation, filed with the clerk, in respect to the portions of the record to be transcribed and filed in said United States Supreme Court under said appeal as prayed and granted the appellant has leave to present the record to
161 the court on Saturday, the 29th of July inst., for the determination of what portion of the record shall be certified to said Supreme Court under said appeal.

162 *Stipulation Filed. Journal "N," Page* 588. *H. H. Taylor, Clerk.*

SATURDAY MORNING, *July 28th*, 1894.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP R. R. *et al.* } Consolidated Causes.

Upon motion of James T. Shields, Jr., receiver, etc., by his solicitors, for an order designating that portion of the record which shall be certified to the Supreme Court of the United States under the appeal prayed and granted herein, it is ordered that unless counsel shall stipulate in writing to the contrary, and unless written requirement be filed with the clerk requesting that such portions of the record ordered herein to be omitted shall be included in the transcript (the court being of the opinion that the question of jurisdiction will be made sufficiently to appear to the Supreme Court of the United States from that portion of the record herein ordered to be transcribed and certified to said Supreme Court of the United States), it is ordered that the clerk limit the transcript to the following documents, papers, pleadings, orders, and decrees, to wit:

(1.) Original bill.

(2.) Order appointing receiver.

(3.) Petition of railroad company for leave to execute
163 bond, if same can be found; otherwise the statement that on June 8th, 1892, petition was filed and bond given in penalty of $5,000.00, J. H. Rathbun as surety, praying that order appointing receiver be vacated.

(4.) Order of June 8th, 1892, vacating order appointing receiver; report of J. F. Hoyle, receiver.

(5.) Memorandum of date of filing petitions of F. H. McKoy, Jr., A. L. Manly *et al.*, William Kimbro, William Harrell *et al.*, filed in 1892, and the nature and purpose of petitions.

(6.) Answers of Allison, Shafer & Co. and R. R. Co. to original bill.

(7.) Memorandum of all petitions and pleadings filed, giving dates of petitions without setting out same, down to final decree except in cases where directed to be copied in full.

(8.) Order appointing temporary receiver, Nov. 12th, '92, and sustaining bill as creditors' bill.

(9.) Amended bill, filed Nov. 29th.

(10.) Petition of J. T. Shields, Jr., receiver, and exhibit thereto, filed Jan. 23rd, 1893.

(11.) Answer of railroad to amended bill.

(12.) Motion of J. T. Shields, Jr., to vacate orders, taking jurisdiction, filed Jan. 23rd, 1893.

(13.) Decree on same, Jan. 30th, 1893.
(14.) Decree appointing permanent receiver.
(15.) Bill Atlantic Trust Company and order consolidating same and extending receivership.
(16.) Answer thereto.
(17.) Petition of complainant to enjoin proceeding in State court by T. Mellon & Son and requiring them to intervene, answer thereto, and order on same.
164 (18.) Petition of Shields, Jr., receiver, in Atlantic Trust Co. case.
(19.) Motion on same.
(20.) Decree on motion, Jan. 31st, 1894
(21.) Final decree, Jan. 31st, 1894.
(22.) Assignments of error.
(23.) Petition for appeal.
(24.) Appeal bond.
(25.) Order granting appeal.
(26.) Citation to appear in the Supreme Court.

If counsel for the parties at interest shall notify the clerk in writing before the transcript is completed to insert therein other portions of the record than that herein designated, the same will be inserted, but the right to adjudge costs incident thereto in case the same shall be held not to be pertinent to the question of jurisdiction as made in the record is reserved.

T. R. Cornick, Jr., solicitor for appellant, requested in writing that the petition filed by J. H. Rathburn and orders made thereon be incorporated in the transcript.

165 In the Circuit Court of the United States for the Eastern District of Tennessee, at Knoxville.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et als.* } No. 942. In Equity.

The Petition of J. H. Rathburn.

To the honorable judges of said circuit court:

The said petitioner respectfully shows unto your honors that on February 8th, 1894, a judgment was rendered in said cause against petitioner and in favor of John Coleman, complainant, for four thousand three hundred and nineteen dollars and thirty-three cents ($4,319.33). Said judgment was rendered against petitioner as surety of the Morristown and Cumberland Gap Railroad Company on a certain bond which was executed in this cause and which will be more particularly referred to hereinafter. Said judgment was rendered upon motion of John Coleman, complainant, and without any notice whatever to the Morristown & Cumberland Gap Railroad Company or to petitioner. On the 10th day of May, 1894, an execution was issued out of your honors' court upon said judgment and

came to the hands of James Joy, deputy marshal of said district. On the 22nd day of May, 1894, the said James Joy, deputy marshal as aforesaid, levied said execution on the real estate of petitioner in the city of Chattanooga, Tennessee, and is about to advertise and sell petitioner's said real estate to satisfy said execution. The rendition of said judgment against petitioner and the issuance and levy of said execution as aforesaid are a great wrong upon this petitioner, as he will now proceed to show.

On the 26th day of May, 1892, the complainant, John Coleman, filed his original bill in your honors' court against the Morristown & Cumberland Gap Railroad Company and Allison, Shafer & Company, alleging that said defendants were indebted to him for work and labor done upon the railroad of said railroad company,
166 and that he had a contractor's lien on said railroad to secure the payment of his claim. Said bill was filed by said Coleman on behalf of himself and all other creditors of said railroad company and sought to wind up said railroad company as an insolvent corporation. Thereupon the Honorable D. M. Key, district judge, made an order taking jurisdiction of said cause as an insolvent bill, and on June 6th, 1892, appointed one F. J. Hoyle receiver. Two days thereafter, to wit, on June 8th, 1892, said railroad company presented its petition to your honors' court asking to have said receiver discharged and the possession of said railroad property restored to said railroad company. Accompanying said petition said railroad company presented its bond with your petitioner as surety. This bond, as petitioner remembers, was in the penalty of five thousand dollars ($5,000.00) and was conditioned to pay whatever judgment said John Coleman should recover against said railroad company in said cause and which should be declared a lien upon said railroad. The object and purpose of said bond was to secure the release of said railroad property from said receivership and restore it to the possession of defendant railroad company. Complainant, John Coleman, was not content to rely upon said bond and leave said property in the hands of said railroad company, but on November 12th, 1892, he again applied to your honors' court to have said receivership restored, and on his application your honors on that date appointed W. S. Whitney receiver of said railroad company and turned the same over to him, and the same has continued in the hands of a receiver of this court up to the present time. On November 28th, 1892, complainant filed his amended and supplemental bill in said cause, seeking practically the same relief as is sought in his original bill. Such proceedings were had in said cause that on the 31st day of January, 1894, a final decree was pronounced, settling the rights of all the parties and pronouncing a judgment in favor of said John Coleman for said sum of $4,319.33 and declaring the same a lien along with other subcontractors' liens on said railroad and ordering said railroad to be sold for the satisfaction of said liens. Said railroad company was by said final decree given four months to pay
167 the money into court, and H. H. Taylor was appointed by said decree a commissioner of the court to make sale of said

railroad company's property in the event said railroad company should not pay the sums adjudged against it within said four months. Said four months will not expire until the 31st day of May, 1894. Petitioner is informed, believes, and charges that said railroad property is worth largely more than all the liens fixed upon it which are co-ordinate with the lien of said Coleman and prior thereto, and that said judgment of said Coleman will be fully paid out of the proceeds of said sale.

Petitioner is advised and insists that in this condition of things it was inequitable and unjust for the said Coleman to take judgment upon said bond against petitioner and issue execution thereon until after the sale of said railroad property, and even then he could only have judgment in the event of any balance of his said claim which might not be satisfied out of the proceeds of such sale.

Petitioner is further advised and insists that as the sole purpose of giving said bond was to secure the possession of said railroad property to said railroad company, and as complainant, upon his own application, had the possession retaken from said railroad company and had another receiver appointed upon said property, that he thereby abandoned and released his claim upon said bond and could look alone to his lien upon said railroad for the payment of his claim.

Petitioner further shows unto your honors that he is informed and believes that said bond has been lost from the file of papers in your honors' court for many months past, and that the same is now lost, so that petitioner cannot state accurately the stipulations and conditions of said bond.

Premises considered, petitioner prays your honors that an order be made staying the enforcement of said execution at least until said railroad property shall be sold and its proportionate part of the proceeds be applied in extinguishment of said judgment in favor of said Coleman against said railroad company, and
168 said James Joy, deputy marshal as aforesaid, be required to return said execution into court and be enjoined from proceeding any further in the enforcement thereof; that on final hearing of this petition your honors make a decree declaring that the said John Coleman abandoned his rights upon said bond by having said receivership restored as aforesaid, and that said bond be cancelled and surrendered up, and that said judgment rendered against petitioner on the 8th day of February, 1894, as aforesaid be declared void and be set aside for the reasons hereinbefore stated.

Petitioner prays for such other, further, different, and general relief as in equity and good conscience he may be entitled to.

J. H. RATHBURN.

WEBB & McCLUNG,
Sol'rs for Petitioner.

J. H. Rathburn, being duly sworn, says that the matters and things stated in the foregoing petition as of his own knowledge are true, and those stated on information he believes to be true.

J. H. RATHBURN.

Subscribed and sworn to before me this 31st day of May, 1894.

HENRY O. EWING,
U. S. Comm'r.

To the clerk of the U. S. circuit court at Knoxville, Tennessee:

The marshal, by himself or deputy, will take no further steps to collect the execution mentioned in the petition until the further order of the court, and copy of this petition and order thereon will issue to the marshal and to the solicitors for John Coleman upon petitioner giving surety for costs of this petition.

This 31st day of May, 1894.

(Signed) D. M. KEY,
District Judge.

We hereby agree to be bound as surety of J. H. Rathburn for the costs of the foregoing petition.

This June 1, 1894.

(Signed) WEBB & McCLUNG.

169 TUESDAY MORNING, *July 24th*, 1894.

Court met pursuant to adjournment.

Present and presiding: The Honorable D. M. Key, judge of the United States district court for the eastern and middle districts of Tennessee.

JOHN COLEMAN
vs.
MORRISTOWN & CUMBERLAND GAP RAILROAD COMPANY *et als.*

Came on for hearing the motion of complainant Coleman to dismiss the petition of J. H. Rathburn and vacate the order of supersedeas or suspension and was argued by counsel, and on consideration it was adjudged and decreed by the court that there is no equity in said petition and said order of suspension was improvidently granted, and that the same be vacated.

It is further ordered that the costs incident to this petition be paid by said Rathburn and his sureties, Webb & McClung, and that the clerk issue to the marshal a writ of *venditioni exponas* for the sale of the property levied on by the *fieri facias* suspended in this petition unless the judgment and costs arising thereon and on the execution be paid within thirty days.

And, on motion of said J. H. Rathburn, it is ordered and decreed that upon payment by him of said judgment he will be entitled to subrogation to the judgment and lien of said John Coleman on the defendant railroad company's property so to be discharged by the payment aforesaid.

170 CIRCUIT COURT OF THE UNITED STATES, } ss:
Eastern District of Tennessee, Northern Division, }

To John Coleman and The Atlantic Trust Company, complainants, and The Morristown & Cumberland Gap Railroad Company and others, Greeting:

You are hereby cited and admonished to be and appear at a session of the Supreme Court of the United States, to be holden at the city of Washington, on the second Monday of October, eighteen hundred and ninety-four, pursuant to an appeal filed in the clerk's office of the circuit court of the United States for the eastern district of Tennessee, at Knoxville, wherein James T. Shields, Jr., receiver of the Morristown & Cumberland Gap Railroad Company, is appellant and you are respectively complainants and respondents, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, this 15th day of August, in the year of our Lord one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred*th* and 119th.

D. M. KEY, *Judge.*

170½ [Endorsed:] No. —. In the U. S. circuit court at Knoxville. John Coleman against Morristown & Cumberland Gap R. R. Co. *et als.* Citation. United States Supreme Court. Filed Aug. 24, 1894. H. H. Taylor, clerk.

Service of this citation upon the Morristown & Cumberland Gap Railroad Company is hereby acknowledged.

HELM & BRUCE,
Att'ys for M. & C. G. R. R. Co.

Due and legal service of the within citation acknowledged for the Atlantic Trust Company this August 27th, 1894.

ATLANTIC TRUST COMPANY,
By C. R. McILWAINE, *Sol'r.*

Due and legal service of the within citation acknowledged for John Coleman this Aug. 28, 1894.

JOHN COLEMAN,
By INGERSOLL & PEYTON, *Solicitors.*

171 UNITED STATES OF AMERICA, } ss:
Eastern District of Tennessee, Northern Division, }

I, H. H. Taylor, clerk of the circuit court of the United States for the eastern district of Tennessee, do hereby certify that the foregoing 170 pages contain a full, true, and correct transcript of that portion of the record and proceedings had in the consolidated causes of John Coleman *vs.* Morristown & Cumberland Gap Railroad

Company *et als.* and Atlantic Trust Company *vs.* Morristown & Cumberland Gap Railroad Company directed by order of the court to be certified to the Supreme Court of the United States, as the same appear of record and on file in my office, together with the original citation in said causes.

Witness my hand and the seal of said court, at office, in Knoxville, Tennessee, this 25th day of August, A. D. 1894.

[The Seal of the Circuit Court, District of East Tenn.]

H. H. TAYLOR, *Clerk*,
By J. T. CARTER,
Deputy Clerk.

Endorsed on cover: Case No. 15,677. E. Tennessee C. C. U. S. Term No., 793. James T. Shields, Junior, receiver of the Morristown & Cumberland Gap Railroad Company, appellant, *vs.* John Coleman & The Atlantic Trust Company *et al.* Filed September 8, 1894.